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The Solicitors' Journal

VOL. LXXVIII. **Saturday, June 30, 1934.** No. 26

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Current Topics.

Commissioners of Assize.

THE fact that more than one Commissioner of Assize has had to be appointed is a fresh reminder of the insufficiency of the present number of judges of the King's Bench Division upon whom normally falls the duty of going circuit. There are, it is true, a few more judges than there were a century ago, but there has been no addition to their ranks commensurate with the increase in population and with the increase in the work to be performed. In those circumstances it is fortunate that there is a method by which, so far as circuit is concerned, relief can be obtained by the appointment of commissioners, although it has always seemed to be anomalous that commissioners have jurisdiction to try cases at the assize towns but have none to do so in London, where their services are more urgently needed. At one time only the serjeants-at-law were placed in the commissions along with the judges. In 1850, Lord CAMPBELL wrote in his "Journal" that "the Serjeants are a very degenerate race; and their exclusive audience in the Common Pleas being gone, it is full time that the Order should be utterly abolished." In that very year the last of their exclusive privileges, that of being included in the Assize Commissions, was abolished, for by the statute 13 & 14 Vict. c. 25, it was provided that "any person being one of Her Majesty's counsel learned in the law or being a barrister-at-law having a patent of precedence, may be named in any Commission for the despatch of civil or criminal business at any county or place or upon any circuit in England and Wales or either of them although such person be not of the degree of the Coif." After that date, and for some years longer, the Coif was conferred by the Lord Chancellor on the recommendation of the Chief Justice of the Common Pleas, but the palmy days of the ancient race were over and their place taken by Queen's (now King's) Counsel, whose names are now, as we have seen, inserted in the Commissions of Assize. Among the many recommendations in connection with the speeding up of business in the courts we have seen no suggestion that just as K.C.'s are considered fit persons to try cases in the country they should be considered as equally fitted to deal with cases in town when the absence or illness of the judges retards the progress of the work.

Bridges and Tolls.

THE passing of Waterloo Bridge—a project which has been a fruitful cause of controversy in recent years—will evoke feelings of regret that RENNIE's work, which someone called the "noblest bridge in the world" and another as "a colossal monument, worthy of Sesostris and the Cæsars," should have to give place to a successor better fitted to carry the greatly increased traffic now requiring to be transported over the Thames. Not only, however, has the intended demolition of the bridge and the erection of another in its place an interest for architects, engineers and commercial men, it has likewise an interest for those who look back to the times when bridges, like roads, were only usable on the payment of tolls. Waterloo Bridge was one of the last, if not the last, in London to be freed from this irritating impost on vehicles and pedestrians; this being accomplished in the year 1878. In the genial pages of *Punch*, wherein we find mirrored so many of the old social customs and humours, there appeared shortly before that date a picture of a Scot who, upon being met with a demand to pay the toll before being allowed to cross the bridge, asked with some indignation if tolls were payable at all the bridges, and being informed that none was exacted at London Bridge, immediately said, "Can you tell me the road to London Brig?" This amusing skit on the proverbial reluctance of our northern friends to disburse even the smallest coin unnecessarily, voiced the general annoyance at such pin-prick demands. Almost a century ago the Rebecca riots in Wales arose out of the anger and impatience of the people at the great increase of tollbars and tolls on the public roads, an outbreak which eventually resulted in the removal of the grievances most seriously complained of; but it was still many years before turnpike roads were completely free from the once familiar tollgates. Here and there one or two may still be found on private roads, but most have gone, to the relief of all who pass and repass along the highways and byways of England.

Poor Persons Procedure.

THE work undertaken by the Bentham Committee for Poor Litigants deserves much wider advertisement and appreciation than it has hitherto received. The annual report of this body for 1933–34, the fifth of the series, sets out an array of facts and figures which reflects considerable credit on those concerned. The Committee acts as a central organisation and executive committee of the London Council of Poor Man's Lawyers and at the Poor Man's Lawyer Centres advice is given free of charge to over 20,000 persons yearly. The number of applications during 1933–34 in specific cases was 636, as against 593 in the previous year and 699 cases were dealt with as against 656 in the previous year. Of these 120 were settled out of court, thirty-six were the subject of successful proceedings, and ten were unsuccessful. Applicants interviewed and advised numbered 470. The highly organised and state-aided service of The Law Society's Poor Persons

Committee is available for High Court litigants who have insufficient means, but is not available for the majority of the very poor who fight small civil cases in the county court and in the police court. The Bentham Committee seeks to fill up that gap, but it labours under the difficulty of having to rely on voluntary contributions and also that of finding an adequate number of solicitors who are willing to give their services gratuitously. The utmost care is taken to ensure that only those who cannot afford legal services in the ordinary way, applying the same standard of means as is employed by the Poor Persons Committee for the High Court, receive assistance; such assistance is refused where there are no merits in the applicant's case, and satisfactory settlements are frequently secured by negotiation. Not only does the Poor Persons Committee of The Law Society refer poor people to the Bentham Committee (rather over one-quarter of the Committee's work arises in that way) but many come at the suggestion of officials of the London County and police courts, and of hospitals and public bodies to which the work of the Committee is being found increasingly helpful. The fact that insufficient support is given to the work by solicitors in London is corroborated by the recently issued annual report of The Law Society's and Provincial Law Societies' Committees on their work during 1933, included in The Law Society's annual report for 1933: "It is noted with regret," says the report, "that although in the provinces there is generally an adequate number of solicitors expressing their willingness to assist, and that in many provincial districts every practising solicitor has allowed his name to be entered on the rota, the proportion of London practising solicitors who have offered their services is inadequate." It may be that conditions in London are somewhat different from those in the provinces, but it is to be hoped that this statement by the Poor Persons Committee will bear fruit, and that an increasing number of London practitioners will assist in this excellent work.

The Registration of Decontrolled Houses.

In *Whiteley* v. *Brown*, recently heard at Sheffield County Court, the claim was for apportionment of the rent of a house, the plaintiff's case being that (1) a certificate showed that the house was not registered as decontrolled; (2) the defendant only paid 5s. 2½d. a week (including rates), but her sub-tenant (the plaintiff) paid 7s. 9d., i.e., a profit of 2s. 6½d. a week, although the defendant did not own any of the furniture. The defendant's case was that (*a*) it was reasonable to believe the house was decontrolled, although not registered as such; (*b*) a former tenant had paid 7s. 6d. or 8s. rent, as the house was partly furnished—there being one table upstairs, another downstairs, and also some chairs; (*c*) the defendant had been tenant for thirty years, but the plaintiff only became tenant in 1927, when he took the house empty. His Honour Judge Frankland held that the house was decontrolled, and judgment was therefore given for the defendant, with costs (see the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 2 (2)). The decision illustrated the difficulty of checking profiteering by tenants who sub-let, as it transpired that the above defendant had fifteen similar tenancies. Compare "Recontrol and Registration" in the "Landlord and Tenant Notebook" in our issue of the 9th June, 1934 (78 Sol. J. 403).

Water Supply and Slum Clearance in Rural Areas.

Speaking at the annual conference of rural district councils held at the Guildhall last Tuesday, Sir Hilton Young, Minister of Health, referred to the £1,000,000 which had been made available by the Exchequer for the improvement of rural water supplies. One hundred and four rural councils, affecting 530 parishes, have applied for a grant for schemes of an estimated capital value of over £1,500,000. Schemes involving an estimated cost of £356,000 have already been sanctioned. Sir Hilton said that, with the assistance and new facilities the Government had made available, the next few years would see a marked improvement in the permanent provision of that vital but hitherto neglected service. For the present emergency, therefore, rural district councils should survey their areas and have definite plans for meeting any shortage and take measures where shortage had already occurred. As regards permanent supplies they should push on with the preliminary applications for a grant, and also with the preparation of the final scheme and, when that was sanctioned, with the work. Figures were also given with regard to slum clearance in rural areas. Under the Housing Act, 1930, 86 per cent. of the 535 rural district councils have sent in comprehensive schemes or have satisfied the Ministry that there are no houses which need to be demolished in their area. Only 2,000 houses have been demolished. It was pointed out that the rate of progress would have to be very considerably accelerated if the programme of 32,068 houses to be demolished and 28,299 houses to be built was to be completed in the scheduled time. Some 43,500 houses have been made fit, 1,200 under the Act and the rest as a result of informal notices. Under the Public Health Acts 9,000 houses have been made fit up to 1932 and an additional 35,000 as a result of informal notices.

Crime Statistics.

The problem of the youthful offender is still with us in an acute form, if one may judge by the statistics of crime in England and Wales for 1932 published in a Blue-book on 19th June (Cmd. 4608). The total number of persons found guilty during the year of indictable offences was 64,959, of whom 43 per cent. were under the age of twenty-one, 21 per cent. being under the age of sixteen. The majority of the younger offenders were found guilty of the less serious forms of crime. In the Juvenile Courts 12,867 children and young persons were found guilty, 85 per cent. of whom were dealt with under the Probation Act, 22 per cent. being dismissed after the charge had been proved, 10 per cent. being bound over without supervision and 53 per cent. being bound over with supervision. Another ominous feature of the report is the statistics with regard to suicides and attempted suicides. These have been steadily rising since 1921. In that year there were 3,715 suicides and 1,380 attempted suicides, in 1931 the figures were 5,092 and 3,115 respectively, while in 1932 there were 5,657 and 3,299 respectively. The statistics generally, however, show a marked improvement. The number of persons dealt with for drunkenness averaged 68,491 a year in the period 1925–29, while in 1930, 1931 and 1932 the numbers were 58,609, 46,846 and 33,858. Cases of cruelty to children averaged 1,127 in the period 1925–29, and numbered 922, 891 and 725 in 1930, 1931 and 1932. Offences against the Education Acts averaged 15,538 in 1925–29, but in 1930, 1931 and 1932 numbered 11,071, 9,032 and 7,696. Offences against the person numbered 5,180 against 5,283 in 1931, 5,669 in 1930 and an annual average of 5,181 in the period 1925–29. As regards murder, attempted murder, manslaughter and infanticide, the crimes known to the police were 385, as against 377 in 1931 and 391 in 1930. Cases of manslaughter numbered 141, of which ninety-one were connected with motor vehicles and only twenty-two resulted in convictions. In 1932 seventy-eight cases of murder of ninety-three persons aged one year and over were known to the police. In twenty-eight cases the murderer or suspect committed suicide. In forty-five cases involving fifty-three victims, forty-six persons were arrested. Sentence of death was passed on ten persons, four were executed and six sent to penal servitude for life. The number of persons found guilty of non-indictable offences numbered 502,211, of whom 265,673 were dealt with for offences against the Highway Acts, 34,796 for offences against the revenue laws and 30,432 for Sunday trading. While the figures make apparent the beneficial effects of recent extensions of the social services, the serious increase in the numbers of young offenders is a problem that must be promptly and courageously faced.

The Duty Owed to a Wrongdoer.

THE recent case of *Hillen* v. *I.C.I.* (*Alkali*) *Ltd.*, decided in the Court of Appeal in November, 1933, and reported in 50 T.L.R. 93, starts one off on a very interesting train of thought. The facts of the case shortly were as follows: Hillen and another, the plaintiffs, were stevedores employed by the owners of the steamship "Darro" to load cargo into that ship from a barge belonging to the defendants. The cargo, consisting of bags and kegs, was stowed in the after section of the hold of the barge, the bags at the bottom and the kegs on top of them. It was desired to send the bags on to the "Darro" first, and the kegs were accordingly placed on the gangway at the side of the hatch. The bags having been cleared, the hatch covers were replaced, and the plaintiffs, along with other stevedores, with the knowledge and consent of the engineer of the barge, proceeded to load the kegs from the hatch covers. There was no evidence as to whether the fore and aft beams of the barge were in position when the barge came alongside, but certainly when the hatch covers were replaced they were not in position, and, being thus unsupported, the hatch covers broke and the plaintiffs fell into the hold of the barge and were injured. They sought to recover damages for their injuries from the owner of the barge.

The point at which the case becomes interesting is when the application of the Docks Regulations is considered. Regulation 34 (B) provides that "Hatch coverings shall not be used in the construction of deck or cargo stages or for any other purpose which may expose them to damage." It was held that the method of loading adopted was contrary to this regulation, and indeed the evidence of the plaintiff Hillen was that he knew it was not right.

Primâ facie, the relation between the plaintiffs and the barge-owner, the defendant, was that of invitee and invitor, and it is on this basis that the judgment of Lawrence, L.J., is based. Following the statement of the law by Willes, J., in *Indermaur* v. *Dames*, L.R. 1 C.P. 274, at 288, that an invitee must use reasonable care on his part for his own safety, he said: "An invitee who makes an unreasonable use of the premises, and in consequence of such unreasonable use sustains an injury, cannot recover damages against the invitor. In the present case the use made by the plaintiffs of the hatch covers cannot properly be said to have been reasonable as it exposed the hatch covers to damage contrary to the provisions of cl. 34 (B) of the Docks Regulations."

Greer, L.J., on the other hand, said: "The plaintiffs' claim therefore falls to be determined upon the basis that they were not invitees but trespassers when they met with their injuries," and with this statement Scrutton, L.J., seems to be in agreement when he says: "I have come to the conclusion that no illegality of the operation of loading from the hatchways, known as it was to the plaintiffs, imposes any duty on the bargeowner other than to abstain from doing acts to injure the stevedores in doing their work," and again: "It is not like the case of a person doing an act which he ought to know might injure a trespasser whom he knew to be so near that the act might injure him, as in the case of felling a tree without warning trespassing children looking on, or blasting in a quarry under similar circumstances. The engineer here did no act which added to the risk and evidently did not think there was any danger for he stood on the hatch and fell through."

It is not necessary to discuss here in any detail the duty owed to a trespasser. The broad rule was summarised in *Addie* v. *Dumbreck* [1929] A.C. 358, by Lord Hailsham, L.C., at p. 365: "There must be some act done with the deliberate intention of doing harm to the trespasser or at least some act done with reckless disregard of the presence of the trespasser"; and by Lord Dunedin at pp. 376-7: "Injury either directly malicious or an acting so reckless as to be tantamount to malicious acting." Just before this decision the Court of Appeal had in *Excelsior Wire Rope Co.* v. *Callan* decided that there was a duty to a trespasser not to start a rope when they knew that children were near, and knowing that an appeal from this decision had been dismissed by the House of Lords in spite of *Addie's Case*, but without knowing the reasons, followed their own decision in *Mourton* v. *Poulter* [1930] 2 K.B. 183, and held the defendant liable for felling a tree while infant trespassers were near. When *Callan's Case* was reported in [1930] A.C. 404, it was found that the case had not been dealt with on the basis of the plaintiff being a trespasser, and in these circumstances some doubt was felt about *Mourton* v. *Poulter*. Probably it must be regarded as deciding that if a person does an act on his premises which he knows will endanger the safety of people standing by, such as starting a wheel, felling a tree or setting off a blast, that is an acting "so reckless as to be tantamount to malicious acting," within the words of *Addie's Case*. Certainly in *Hillen's Case* the Court of Appeal has treated *Mourton* v. *Poulter* as sound.

In *Hillen's Case* some amusing analogies were discussed, and Scrutton, L.J., said: "A burglar could not sue the house-owner for a defect in the staircase known to the householder but not to the burglar, and a cat burglar could not sue the houseowner for non-disclosure of the added risk of a defect in the water pipe up which he was climbing but which he did not know of," but added that in such cases there was no relationship of invitor and invitee. The interesting point about *Hillen's Case* is that it shows that a person who starts by being an invitee may, by doing an illegal act, become a mere trespasser, and one may speculate on how far this principle extends. It would seem to follow that a person driving a stolen car away from the scene of the theft would have no right of action against another driver who collided with him, or against a highway authority who had been guilty of a misfeasance which brought his drive to an untimely end. Would the position be any different if he was merely driving a stolen car about perfectly lawful business, or was walking along the street with a stolen banknote in his pocket? It would certainly be curious if a negligent driver who had caused him injury found himself not liable because his negligence was not tantamount to malice. Perhaps, however, the court would treat driving a car as a dangerous act within *Mourton* v. *Poulter*.

Such a defence has never yet been raised in a running-down action, but *Hillen's Case* would seem to pave the way for it. Meanwhile until some brave pleader puts it in issue, it is possibly idle, however amusing, to speculate.

Solicitors and Registration under the Town and Country Planning Act, 1932.

[CONTRIBUTED.]

SECTION 7 of the Town and Country Planning Act, 1932, provides that where a resolution to prepare or adopt a town planning scheme has taken effect, the local authority or joint committee who passed the resolution shall, within a specified time, publish a notice of the resolution in the *London Gazette* and in a local newspaper, and also serve in the prescribed manner a like notice in the case of every hereditament in the area to which the resolution applies on the person shown as the occupier thereof in the latest assessment to income tax under Sched. A, and also upon the person so shown as the owner thereof.

Alternative methods of service have been prescribed by the Procedure Regulations made by the Minister of Health under the power conferred upon him by s. 37 of the Act, but the method of service usually selected by local authorities is to

send the notice by prepaid letter post addressed to the person to be served at his residence.

In the case of schemes which were in the course of preparation at the time of the coming into force of the Act of 1932, these " personal " notices were to be served not later than the 30th November, 1933, whilst in the case of schemes the preparation of which was commenced after the 1st April, 1933, similar notices have to be served in accordance with the time limits set out in the regulations.

Any person who is or claims to be an owner of property in the area to which the resolution applies, together with certain associations, may, by notice in writing, specifying in the case of an owner the property of which he claims to be the owner, require the local authority to register his name and address, free of charge, in respect of the property specified in the notice. The authority must comply with this notice, and must inform the person concerned that his name has been duly registered.

Where, by virtue of the Act or the regulations made thereunder, public notice is required to be given of anything done or proposed to be done in connection with any town planning scheme which will affect any property, a copy of such notice must be served on every person whose name and address appears in the register in respect of such affected property.

The object of these provisions is, of course, to enable any landowner to take steps to ensure that he shall be kept informed of the progress of any scheme which affects his property. The person seeking registration is not called upon to prove his title, and incurs no expense whatsoever, yet property owners as a whole seem very apathetic in the matter, and only a comparatively small percentage of owners have taken the trouble to register (about 15 per cent. in the district with which the writer is personally concerned).

In all cases in which real property is being conveyed, the purchaser's solicitor must, of course, search in the local land charges register. Wherever the property in question is affected by a town planning scheme, the fact will be disclosed on the schedule to the official certificate of search, issued by the local land charges registrar, but the actual provisions of the scheme will not, of course, be set out on that form. It then becomes the solicitor's duty, it is submitted, to ascertain the precise effect of these town planning restrictions, and, in order effectively to protect the interests of his client, the practitioner should take steps to secure the registration of the client's name and address for the service of future notices affecting the property. It is believed that solicitors do not generally undertake this task, and, in the writer's district, there has not been a single instance of the purchaser's solicitor troubling to do so.

No extra expense would be incurred by this practice, and, in addition to the safeguarding of the client, the usefulness of the register would be increased. Even though an owner of property may have been registered, subsequent changes in ownership will not appear in the register unless steps are taken with the object of achieving this end, and the result is that, although the register purports to be a register of the owners of affected property, the names and addresses of many people may continue to appear therein long after their ownership has ceased. As long as their names appear on the register, the local authority will continue to send notices in respect of the property to those persons registered as the owners, whether those persons are still the owners of the affected property or not.

At intervals of not less than three years, the local authority may require the registered owners to state, within a period of one month, whether they require their names and addresses to be registered afresh, and, in cases where no request for re-registration is made, the name of the owner may be removed from the register. Although spasmodic attempts can, therefore, be made by the local authority to keep the register up to date, much can happen in an interval of three years, and, without some co-operation on the part of property owners and their legal advisers, the register cannot be regarded as a reliable guide to contemporary ownership.

Finally, it is provided that the local authority may at any time, with the consent of the person concerned, remove the name of that person from the register, and the vendor's solicitor might usefully co-operate in the attempt to keep the register up to date by seeing that his client's name is removed from the register after he has relinquished all interest in the property affected.

Much has been said and written about the modern bureaucratic despotism, but, if the example of registration under the Town and Country Planning Act can be taken as a criterion, comparatively few owners are willing to take even the slightest trouble to safeguard their own interests or to ensure that they are kept informed of the progress of schemes affecting their property, and the present state of affairs is worthy of the attention of all solicitors engaged in conveyancing practice

A New Terror ?

SECTION 276 of the Local Government Act, 1933, has not been in force long enough, so far as one can discover, for its real or apparent effect to be felt. Its terms, however, are sufficiently startling to the ordinary mind to be worth a few moments' consideration. The section reads as follows: " Where a local authority deem it expedient for the promotion or protection of the interests of the inhabitants of their area, they may prosecute or defend any legal proceedings." The powers thus conferred upon local authorities commenced on 1st June, 1934. One may hazard a guess as to what was in the minds of our legislators when they passed this further milestone on the road of democracy, but the practical application of the new law may be productive of results far different to those anticipated by our modern Solons. Whatever the intention of the Legislature, there can be no doubt that as a piece of draftsmanship this section is about as bad as may be, for although it cannot well be attacked for lack of definition, since it opens up the whole wide field of expediency both as regards interest and as regards procedure, yet there can be little question that such extensive powers were not intended to be placed in the hands of local authorities, be they never so enlightened or humane. Two examples, trivial enough, perhaps, may suffice to show the dangers inherent in the new situation. In the first place, the section creates a new cause of action in favour of local authorities, namely, the existence in the minds of the majority of the council that something is expedient for the promotion or protection of the interests of the inhabitants of their area. Having so decided they may, in the words of the section, " prosecute or defend any legal proceedings." Note the word " any." Suppose that I am sued by a builder for repairs done to my house, and I defend the action on the ground, *inter alia*, that he has not carried out his contract by failing to remove debris and so forth from my front garden, a source of deep annoyance to me and a painful eyesore to my neighbours, one in fact spoiling the whole appearance of our pleasant Acacia Road. Manifestly, it may be truly said that it is to the interest of the inhabitants, or at any rate of a number of them, that the dispute between myself and my builder should be ended and with all speed. Are the local authority, under s. 276, entitled to step in and either help the builder with his case or, in order the quicker to get the eyesore removed, defend the case for me ? If you have a majority on a local authority of an advanced political colour, say a very dark red, may they " prosecute " legal proceedings against the leader of a party wearing garb of a different hue on the ground, say, that his holding of meetings within the area of the local authority is not expedient for the promotion or protection of the interests of the inhabitants of that area ? If so, the difficulties of the Government upon a recent occasion may well have been foreseen and provided

for, although it is true of course that the powers thus conferred do not as yet seem to have been used. For how long shall be have to wait for the spate of litigation which is clearly not beyond the bounds of probability? The very phrase "interests of the inhabitants" strikes a cold note of apprehension in the minds of those who fear that they may have to foot the bill. There is a clear duty upon every ratepayer to see so far as he can that his local authority are not bitten with that desire for "law" which has been the ruin of so many who were at any rate spending their own money. "*Les vertus se perdent dans l'intérêt, comme les fleuves se perdent dans la mer*," says Rochefoucauld. Where interests of individuals and of classes are contrasted so much as they tend to be to-day, it may well be that the general good will be lost sight of amid the clash of forensic arms supported on the one side or the other, as these may be, by the money bags no less than the declared approval of our local councils. As indicated, the time may be too soon to pronounce more than a hesitating apprehension of danger, but there is the section for all to read, and, possibly, a concentrated attack upon it now may relieve us later from the consequences of its being taken literally by some local authority anxious to make history.

Costs.

ALLOWANCES FOR INSTRUCTIONS.

(*Continued from page* 401.)

We observed in the last article that the allowance for instructions for a statement of claim is 13s. 4d. The allowance for instructions for a defence or a counter-claim is 6s. 8d. If they are combined in one document, as they frequently are, then the allowance is also combined and 13s. 4d. may be charged. Similarly, the fee for instructions for a reply to a defence is 6s. 8d., but where the plaintiff sets up a counter-claim, then the allowance for instructions for the reply is 13s. 4d., notwithstanding that the reply in most instances does not extend beyond two or three lines, and is more often than not settled without the assistance of counsel.

Item 72 of Appendix N provides an allowance of 6s. 8d. for instructions for a special petition, or any other pleading (not being a summons), and interrogatories for examination of a witness. The term "other pleading" means "any petition or summons, and also the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant": see s. 225 of the Supreme Court of Judicature (Consolidation) Act, 1925. Any petition except a special petition and also summonses are excluded from the ambit of item 72 whilst the allowance for instructions for a statement of claim, a defence, or a reply, are otherwise provided.

The wording of item 72 should be noticed carefully, for it will be observed that the term "other pleading" includes by implication, summonses, and item 73 of the Appendix grants an allowance of 6s. 8d. for instructions to amend "any pleading" which, by inference, most include the amendment of summonses.

Before leaving this term "other pleading," it is useful to note that in *Milbank* v. *Milbank* [1900] 1 Ch. 376, Vaughan Williams, L.J., observed "the defendant will be rash if he considers that these particulars are not a pleading within the meaning of that rule," the rule to which he was referring being r. 15 of Ord. 31 relating to the discovery of documents. This makes it pretty clear that an allowance of 6s. 8d. should be granted under item 72 as instructions for particulars, or, alternatively, should be allowed under item 73 as instructions to amend pleadings, for, as his lordship observed in the same case, particulars are, in fact, amendments of the pleadings.

An allowance of 6s. 8d. is granted by item 74 for instructions for affidavits in answer to interrogatories and for other special affidavits. In point of fact, all affidavits are regarded as special affidavits with the exception of affidavits of service. Although the item does not so provide, the allowance is not granted in respect of an affidavit made by a solicitor to the party or his clerk, except in those cases where he is put to special trouble, say, where he is compelled to make a number of involved calculations which are entirely outside his province.

This allowance for instructions for an affidavit includes all attendances on the deponent to settle and read over the draft: see r. 27 (5) of Ord. 65, and, where the solicitor is compelled to travel some distance to obtain it, will include the cost of the journey. In this connection it will be remembered that r. 27 (1) of Ord. 65 specifically gives the taxing master discretion to grant such suitable allowance for instructions for special affidavits as he thinks proper in lieu of the allowance for instructions granted by item 74. Where, in lieu of an affidavit of documents, a list is drawn, the fee of 6s. 8d. for instructions is still allowed.

The allowance for instructions to appeal against an order from the court or judge is 13s. 4d., *vide* item 75, but this fee will not be allowed in the case of an appeal against a master's order.

Item 77 grants an allowance of 6s. 8d. as instructions to counsel to advise on evidence when the evidence-in-chief is to be taken orally, whilst item 78 extends this allowance by stating that it is not to exceed one guinea. Both of these allowances, however, must be read in conjunction with r. 27 (29) of Ord. 65, to which reference has previously been made, and which provides that the taxing master has unfettered discretion to increase any allowances where he considers that the circumstances so warrant. In normal cases an allowance of 13s. 4d. is granted as instructions to counsel to advise on evidence, and this, of course, covers the drawing and fair copying. Reference may also be made here to r. 27 (15), which gives the taxing master a free hand to allow such costs of procuring the advice of counsel on the pleadings, evidence and proceedings as he thinks just and reasonable. It may be noticed that a fee for instructions to advise on evidence is customarily allowed, even where the evidence is given by way of affidavit and is not taken orally.

The remaining fees under the heading of "Instructions" relate to the allowances in respect of briefs, and these have been dealt with in a previous article. A minimum fee of 6s. 8d., to include drawing and fair copying, is allowed in respect of an application to court where there is no other brief, whilst although the prescribed fee under item 80 for instructions for a brief on a motion for special injunction is stated to be one guinea, it may be noticed that a fee of fifty guineas was allowed in *Re Burroughs, Wellcome & Co.*, 22 R.P.C. 164, and an even larger fee than this is by no means unknown.

Company Law and Practice.

Committee of Inspection.

Liquidators in the course of their duties are frequently assisted, or hampered, as the case may be, by committees of inspection, and this may be a convenient time to look into the appointment, constitution and functions of these bodies. They are of comparatively recent origin so far as companies are concerned, and only date back to the year 1891. Let us first of all look at the method of constituting them in a compulsory liquidation.

We shall find it in s. 198, which provides that when a winding-up order has been made, the separate meetings of creditors and contributories which are held to determine whether the court should be asked to appoint another liquidator

in place of the official receiver must also determine whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee, if appointed. The court has power to make appointments to give effect to any such determination, and if the creditors and contributories differ the court must decide the difference.

I do not want to take up much space with the details as to these meetings, but it may perhaps be useful just to remind my readers of some of the principal winding-up rules on the point. Under r. 119 of the Companies (Winding-up) Rules, 1929, the first meetings of creditors and contributories (which are the meetings which have to decide about the appointment of a liquidator) have to be held within one month of the winding-up order, or, in the case where a special manager has been appointed, within six weeks after the date of the order. The court has power to extend the time. Creditors and contributories are entitled to seven days' notice of the meetings (r. 127): a quorum for any purpose (other than the election of a chairman, the proving of debts and the adjournment of the meeting) is three creditors, or three contributories, as the case may require, or all of them, if their number does not exceed three.

Rule 137 deals with the requirements as to voting by creditors at first meetings of creditors; no person can vote as a creditor at such a meeting unless he has lodged with the Official Receiver, not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, a proof of the debt, which he claims to be due from him to the company. Following this, we find r. 141, which confers upon the chairman of the meeting power to admit or reject a proof for the purposes of voting, but provides that his decision is to be subject to appeal to the court, and that if he is in doubt he should mark the proof as objected to, and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained. Voting by proxy is allowed (r. 144) in the manner explained in the subsequent rules.

It has been remarked that, under the section, when the meetings differ the court must decide the difference. Rule 56 provides the machinery for the court doing so. Section 199 deals with the proceedings of the committee of inspection, and provides that it is to consist of creditors and contributories, or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed upon by the meetings, or, in case of difference, determined by the court. The committee has to meet at such times as it appoints and, failing such appointment, at least once a month, and the liquidator or any member can also call a meeting as and when he thinks necessary (s. 199 (2)).

The necessary quorum is a majority of the committee, and it may act by a majority of the members present at a meeting; a member can resign, and his office as a member of the committee is vacated by his bankruptcy, or his compounding or arranging with his creditors, or by his absenting himself in five consecutive meetings of the committee without the consent of those members who, together with himself, represent the creditors or contributories, as the case may be. There is also a power of removal by ordinary resolution in a meeting of the class appointing the member proposed to be removed, but seven days' notice of the meeting, stating its objects, must be given. When a vacancy occurs, the liquidator must summon a meeting of the class which made the appointment, and this meeting may reappoint the same, or appoint another creditor or contributory to fill the vacancy. The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee (s. 199).

It may sometimes happen that some creditor who ought, for some reason or another, to be represented on the committee fails to obtain such representation; in such a case, if he has failed to obtain representation through inability to attend the meeting, or in some other way through no fault of his own, the court may be prepared to assist him by having a fresh meeting summoned, and giving the creditors an opportunity of considering whether some member of the committee should not be removed and a representative of the omitted creditor substituted (*Re Radford & Bright* [1901] 1 Ch. 272, 735).

Rule 161 of the Winding-up Rules is one which restricts the activities of members of the committee of inspection—it is well summarised by the side note, "Committee of Inspection not to make profit." In this connection, reference may also be made to *Re Gallard* [1896] 1 Q.B. 68. No remuneration is to be paid to any member of the committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee, except by the express sanction of the court (r. 163). Rule 223 (2) provides that no defect or irregularity in the appointment or election of a member of a committee of inspection shall vitiate any act done by him in good faith.

So much for the appointment of a committee of inspection in a compulsory liquidation; the appointment of such a body may also be made in a creditors' voluntary winding-up under s. 240. Under this section the creditors are given the power, either at the meeting which has to be summoned under s. 238, or at any subsequent meeting, to appoint a committee of inspection consisting of not more than five persons. If such a committee is appointed the company may appoint such number of persons as they think fit to act as members of the committee not exceeding five in number. But if the company does this the creditors have a right of veto in respect of all or any of the company's appointees, which is subject, however, to an appeal to the court. The court may appoint other persons to act as members of the committee in place of those in respect of whom the creditors have exercised their right of veto. Section 199 (except sub-s. (1), which is the sub-section dealing with the constitution of a committee in a compulsory liquidation), applies to a committee of inspection appointed in a creditor's voluntary winding-up (s. 240 (2)).

Now let us see what the functions and powers of the committee of inspection are. The committee of inspection is in the nature of a watchdog, and there are numerous things which the liquidator in a compulsory winding-up can only do with the sanction of the court or of the committee of inspection; these are set out in s. 191 (1), and I do not propose to reiterate them here. Whether there is much to be said for the present distinction between things for which the liquidator needs consent and those for which he does not is a topic of considerable interest, and gives rise to some difference of opinion.

The powers of a liquidator in a voluntary winding-up are set out in s. 248 and those powers, again, I do not intend to set out at length. Section 248 gives the powers by reference back to s. 191, though there are not so many powers which in a voluntary winding-up require consent before the liquidator can exercise them. It may be noted that s. 200 provides that, in a compulsory winding-up, the consent of the Board of Trade can be obtained by the liquidator where there is no committee of inspection, and will be as efficacious. The alternative conferred by the sections of obtaining the consent of either the court or the committee of inspection does not mean that, if the committee will not give its consent, the liquidator can necessarily go to the court and get its consent instead behind the backs of the committee.

This is illustrated by *Re Consolidated Diesel Engine Manufacturers Ltd.* [1915] 1 Ch. 192, where the liquidator went to the court and obtained the sanction of the court to the appointment of a particular solicitor, though he knew that the committee disapproved of his appointment. The court, on a subsequent application by the committee, set aside the order appointing the solicitor, with costs to be paid by the liquidator personally.

The committee of inspection also has the important task of fixing the remuneration of the liquidator; in a compulsory

liquidation this is provided for by r. 157, and in a creditor's voluntary winding-up by s. 241, which also provides that, if there be no committee, the creditors may fix the liquidator's remuneration. Section 243 also contains a provision of some importance—it makes s. 234 applicable to a creditors' voluntary winding-up, as well as to a members' voluntary winding-up, but it provides that the powers of the liquidator under that section are not to be exercised except with the sanction either of the court or of the committee of inspection.

A Conveyancer's Diary.

Sub-Mortgages under the L.P.A., 1925—I.

SUB-MORTGAGES are not very common, and when they do occur are apt to present difficulties to the practitioner. The relevant provisions of the Law of Property Act, 1925, are extremely ingenious, but intricate, and not to be understood without careful study.

Let us first consider what a sub-mortgage really is, and how it was effected before the Act of 1925. It is supposed that the sub-mortgagor, being entitled to a mortgage debt secured to him by a mortgage (which may be called the "head mortgage"), wishes to raise money without calling in the mortgage debt due to him under the head mortgage. The usual reason for resorting to a sub-mortgage is that the sum required by the sub-mortgagor is small relative to the amount secured by the head mortgage or required for a temporary purpose. The sub-mortgagor then raises the money required by him by mortgaging the mortgage debt due to him under the head mortgage and the benefit of the security created by the head mortgage.

Before the Act of 1925 a sub-mortgage was a simple transaction. The sub-mortgagor assigned to the sub-mortgagee the mortgage debt due under the head mortgage subject to a proviso for redemption on payment of the money advanced by the sub-mortgagee to the sub-mortgagor. The sub-mortgagor also conveyed to the sub-mortgagee the land comprised in the head mortgage subject to the right of redemption subsisting under the head mortgage and subject also to redemption under the sub-mortgage. The sub-mortgagee had and has two remedies. If default—meaning such default as will make the mortgagee's power of sale exercisable—is made under the sub-mortgage, he can sell the property comprised in the sub-mortgage, namely, the mortgage debt due under the head mortgage, and the benefit of the security created by the head mortgage. The mortgage debt will be assigned to the purchaser discharged from the right of redemption under the sub-mortgage, and will thenceforth belong to the purchaser absolutely. But the security for the mortgage debt (i.e., the mortgaged land) will be conveyed to the purchaser subject to the right of redemption subsisting under the head mortgage.

If default is made under both mortgages, the sub-mortgagee is in a stronger position. Being the assign of the debt due under the head mortgage and of the powers conferred by the head mortgage, he can sell under that mortgage and convey the mortgaged land to the purchaser discharged from the right of redemption under the head mortgage. Being entitled to sell under the sub-mortgage, the sub-mortgagee can also bar the right of the sub-mortgagor to redeem under the sub-mortgage. The sub-mortgagee retains his own debt out of the purchase money, pays to the sub-mortgagor the residue of the mortgage debt owing under the head mortgage, and pays the ultimate residue of the purchase money to the original mortgagor.

But a sub-mortgagee cannot, it is submitted, sell under the head mortgage unless default has been made under *both* mortgages. That this is so seems clear on principle, though the writer is not aware of any direct authority on the point. The sub-mortgagee holds the mortgage debt owing under the head mortgage as a security only, and subject to redemption by the sub-mortgagor. The sub-mortgagee cannot destroy the mortgage debt—as would be done by selling under the head mortgage—without first giving an opportuniy for the sub-mortgagor to redeem, unless, of course, special power to do so is given by the sub-mortgage. If the head mortgage was for £20,000 and the sub-mortgage for £500, it would be a great hardship if the sub-mortgagee could call in and realise the £20,000, thereby disturbing a valuable investment, although no default had been made by the sub-mortgagor in paying the £500 and without giving notice to the sub-mortgagor. Yet this could be done if the sub-mortgagee can sell under the head mortgage without default having been made under the sub-mortgage. In *Hobart* v. *Abbott*, 2 P.W. 642, it was held that in a suit by a sub-mortgagee to foreclose the head mortgagor the sub-mortgagor was a necessary party. This shows that a sub-mortgagor has a right to redeem the mortgage debt which can only be barred by proceedings to which he is a party or in accordance with the special contract made by the sub-mortgage.

Nor is it clear that a purchaser from a sub-mortgagee purporting to sell under the head mortgage alone would obtain a good title against the sub-mortgagor who had not made default. By s. 104 (2) of the L.P. A., 1925, the title of the purchaser is not impeachable on the ground that no case had arisen to authorise the sale. But sub-s. (2) applies only where the conveyance is made in exercise of the power of sale conferred by the Act, so that *primâ facie* the purchaser would not be protected against claims by the sub-mortgagor. By s. 104 (3) a conveyance on sale by a mortgagee is deemed to have been made in exercise of the power of sale conferred by the Act, unless a contrary intention appears. But this sub-section could hardly apply when it appeared from the conveyance that the sub-mortgagee was selling under the head mortgage only.

Mr. Davidson does not expressly deal with the point, but it is significant that in his precedent of a sub-mortgage (vol. 2, Pt. II, p. 960 of the 1858 ed.) provision is made that a person paying money to the sub-mortgagee selling under the head mortgage shall not be bound to see or inquire whether default has been made in payment of the principal money or interest secured by the sub-mortgage. Even supposing that a purchaser from the sub-mortgagee selling under the head mortgage alone does obtain a good title, yet as between the sub-mortgagee and the sub-mortgagor the sale would be bad, and the latter would have his remedy in damages against the sub-mortgagee (s. 104 (2)).

It is, therefore, submitted that a conveyance on a sale by a sub-mortgagee should always be expressed to be made in exercise of the powers conferred by both mortgages. If this is done, the purchaser will be protected under s. 104 (2). It could, of course, be provided in the sub-mortgage that the sub-mortgagee should have power to sell under the head mortgage without default being made under the sub-mortgage. But a sub-mortgagor should not, it is submitted, be advised in ordinary cases to agree to such a provision. Next week we will consider the relevant provisions of the L.P. A., 1925.

PAPERS IN CUSTODY OF THE COURT.

In making an application before Mr. Justice Swift last Tuesday, says *The Times*, counsel reminded his lordship that the libel action, *Crowley* v. *Constable & Co., Ltd.*, was tried before him some two months ago, when he (Mr. Justice Swift) ordered certain papers to be kept in the custody of the court. Mr. Crowley had now been arrested and charged with receiving them, and he (counsel) asked that the papers might be handed over, for the purpose of the prosecution, to a police officer who was present. His lordship said that he thought that the proper thing to do was to hand the papers over to the solicitor instructing counsel [Mr. Edward F. Iwi] on his giving a receipt for them and an undertaking to bring them back. As an officer of the court he would be entrusted with them.

Landlord and Tenant Notebook.

Wilchick v. Marks: II.—Landlord's Liability to Third Parties.

HAVING decided that neither party to the tenancy agreement was liable to the other for repairs, Mr. Justice Goddard had next to consider whether the one, and if so, which, or whether both were responsible to the plaintiff for the nuisance.

The learned judge found himself faced not only with an absence of direct authority, but also with a conflict of indirect authority. The *dictum* in *Nelson* v. *Liverpool Brewery Co.* (1877), 2 C.P.D. 311: "We think there are only two ways in which landlords and owners are liable in the case of injury to a stranger by defective repair of premises let to a tenant, the occupier, and the occupier alone, being *primâ facie* liable: (1) in the case of a contract by the landlord to do the repairs where the tenant can sue him for non-repairing; (2) in the case of misfeasance by the landlord as where he lets premises in a ruinous condition," has long been regarded as a complete, if concise, statement of the law; but Lopes, J., who uttered it, was dealing with a case in which the tenant had covenanted to repair, and had no occasion to visualise circumstances in which neither party had undertaken the preservation of the fabric, while the landlord had reserved the right.

But among more recent authorities there was one case which shed a little light on the problem, that of *St. Anne's Well Brewery Co.* v. *Roberts* (1928), 44 T.L.R. 708, C.A. The facts of that case were a little unusual. Part of an ancient city wall, passed only a month before by the city architect, had collapsed on to the plaintiffs' property. The part that so collapsed formed the boundary of a garden of a cottage let by the defendants on a weekly tenancy, rent 4s. 3d. The tenant was not sued. He probably, as was observed, did not realise that that part of the wall was part of his premises; not that his ignorance would have availed him. But the terms of the tenancy were not relevant (or the defendants might have pleaded, on the strength of Lord Kenyon's judgment in *Cheetham* v. *Hampson* (1791), 4 T.R. 318, cited last week, that the tenant alone was liable), for the plaintiffs relied on the allegation that the wall was founderous when the tenancy was granted. On this they obtained judgment at first instance; but the Court of Appeal now reversed the decision, holding that unless an owner either knew or ought to have known the dangerous condition of his property before parting with occupation, he was not responsible. The *Rylands* v. *Fletcher* doctrine could not avail the plaintiffs, for the building of a wall was normal user of land. (As some of us will recollect, the practice dates from the time of Balbus.) Also, the doctrine applied to occupiers only. If an action were brought for nuisance, the first question to consider was, who was occupier? The occupier would escape liability if he showed either that he did not create the nuisance or that he did not suffer it to continue. Lawrence, L.J., said: "Any bargain made by the person responsible to his neighbour or to the public that another person should perform that obligation may give rise to rights as between those two contracting parties, but does not, in my judgment, in any way affect the rights of a third party"—and this passage, as will be appreciated, clearly cuts down the sweeping proposition of Lopes, J., in *Nelson* v. *Liverpool Brewery Co.* And it implies that if the defendants had or ought to have been aware of the dangerous condition of the wall, they would have been liable to the plaintiff.

But apart from this recent case, the root principle, sounding in common sense, was to be found expressed in the judgment of Abbott, C.J., in *Laugher* v. *Pointer* (1826), 5 B. & C. 547. The facts of that case do not at first sight suggest the possibility of an analogy. The action was for negligence, being a running-down case against the owner of a carriage drawn by hired horses and driven by a driver, employed by the owner of the horses, who would look to the defendant only for a gratuity. The part of the judgment cited by Goddard, J., is: "I have the control and management of all that belongs to my land or my house, and it is my fault if I do not exercise my authority so as to prevent injury to another." The word "prevent" is worth stressing; the principle has mostly been applied to bring home to one person responsibility for the acts of another; as stated, and as applied by Goddard, J., it extends to omissions.

The gist is, of course, authority springing from control; and it must be remembered that Goddard, J., was dealing with a landlord who, if not contractually liable to repair, had issued a rent book which stated in print that he reserved the right to repair, had always done repairs, and had undertaken to effect the particular repair which would have averted the accident. But it would not be safe to assume that these conditions need necessarily all be present to make a landlord responsible to third parties; control and authority are matters of degree, and it is well known that landlords of low rental properties often keep them in repair for practical reasons of self-interest. The possibility of a tenant refusing admission to a landlord anxious to repair is indeed remote.

There remained the question whether the tenant was liable to the plaintiff; and here the learned judge had to do a certain amount of picking and choosing, as a result of which he rejected those authorities which said or suggested that if a landlord were liable his tenant was not. In none of those cases has the tenant's liability been actually in issue, and Goddard, J., rejected the suggestion that an occupier could modify his duty to passers-by by means of a contract with someone who might be abroad.

Land and Estate Topics.

By J. A. MORAN.

THIS has been a good month in the market for real estate; not only were auctions numerous and well patronised, but private negotiations resulted in many interesting transactions. Speculation in building land continues to be very much in evidence, and freehold ground rents are as likely as not to be picked up before the hammer is brought into requisition.

The flat, for residential purposes, does not make much headway in the suburbs, but it continues to make rapid strides in the West End. And now there is good reason to believe it is about to take root in the city. The big house that is merely divided off, has not much to commend it, and that is why old premises and well-known mansions are being demolished in order to make way for the real thing, in large and small doses.

The annual meeting of the shareholders of the London Auction Mart partook of something of the nature of a family gathering. Most of the directors turned up, and they had the field almost to themselves. The task imposed on the chairman, Mr. J. Seagram Richardson, a past-President of the Auctioneers and Estate Agents Institute, and head of the well-known Cheapside firm of Debenham, Tewson & Chinnocks, was short and pleasing. The profits, he said, were within £5 of those of last year, which showed a great improvement on the previous one. The total realisations at the Mart during the the year exceeded £3,500,000. The company is possessed of certain gilt-edged securities, the market value of which on the auditing of the accounts was £7,742, or nearly £2,000 in excess of the cost. Further, during the thirteen years of its existence, it applied the sum of nearly £8,000 to reduction of the loan on the property, and for depreciation.

The auction by Messrs. Debenham, Tewson & Chinnocks of the freehold of The West Ham Stadium will be held on Tuesday next. Just the date one would expect from a firm that knew its business. For just now little is talked of except "sport"; and the huge "gates" at Wimbledon and elsewhere

should give some idea of the commercial possibilities that are associated with our recreative tendencies.

Conditions of sale make quaint reading at times. The title to a Tunbridge Wells property just offered at auction begins with an Act of the second and third years of the reign of Mary Tudor whereby the heirs of Sir Edward Nevile, Knight, are restored to the remainder of the Barony of Burgavenny. This distinguished fraction of land was formerly part of the Abergavenny Estates.

"It is a matter for serious consideration," said a speaker at the Conference of the National Building Societies at Harrogate, "whether house purchase has not already gone too far." There is no doubt it has, but only in one direction. A man who has to struggle to pay his way, and who by the very fact of owning property and the inevitable loss on its forced sale, would be prevented from moving to a locality where employment is better, and the conditions more desirable, would be better off as a tenant. It is true that the house-owner is the backbone of the country and the keystone of the nation's social structure, but there are different kinds of house-owner; and the one who stands very much apart from the others is he who exchanges a small deposit and commits himself to a levy for ownership of a habitation that is more likely than not to send a maiden aunt into ecstasies and a bricklayer into despair.

By the Town and Country Planning Act, a local authority is empowered to schedule land as an open space, or to put restrictions upon its use, and to compensate the owner for loss of building value. In a town where a permanent open space will enhance the value of neighbouring property, the planning authority can recoup itself by levying a charge for "betterment" on the owner whose land has been increased in value. But as large areas in the country can be scheduled as open spaces without making much difference to the value of adjacent land, any money needed for compensation has to be found by the local council which makes the plan. This would be hard in the case of that part of the Lake District which has been much in evidence of late, and that is why welcome is to be accorded to the new Lake District National Reserve Association which has come to the rescue. From the fund which it accumulates from the subscriptions of its members, it will assist the local councils to compensate land-owners who will keep their land but lose the right to build on it.

What is known as the "ribbon development" shows no signs of abatement. In other words, the available building frontages to new and existing roads continue to be built up to a depth of one house only, and the land behind is left for future development. This is a very wasteful method, as apart from disfiguring the countryside, it increases the dangers arising from main line traffic.

Our County Court Letter.

THE AGRICULTURAL HOLDINGS ACT, 1923.

In the recent case of *Bengry* v. *Griffiths*, at Ludlow County Court, the claim was for £32, being the value of trees and sheds removed by the defendant from a small holding, the property of the plaintiff. The defence was that the claim was not maintainable, as it was barred by an award of an arbitrator, under the Agricultural Holdings Act, 1923, s. 16. The plaintiff's case was that (1) the trees and sheds had not been mentioned to the arbitrator, and his award did not deal with them; (2) the defendant (at the end of a five years' tenancy) had cut down a row of nine damson trees (valued at £5), a number of ash trees (valued at £2) and two sheds worth £25; (3) the defendant's successor (the new tenant) had been allowed £5 by the plaintiff in respect of damage to implements through lack of sheds. The defendant denied having cut down the trees, and the arbitrator's evidence was that (*a*) he saw no trace of any trees having been cut down, (*b*) he thought the shed belonged to the tenant, and—although the landlord was stated to have contributed 30s. towards the cost—no allowance had been made to him (in the award) with regard to the shed. His Honour Judge Samuel, K.C., accepted the defendant's evidence, with regard to the trees, which should have formed the subject of an item of claim in the arbitration. The claim was also held to be barred, with regard to the sheds, but—in the event of an appeal to the Divisional Court—the damage was assessed at 15s. Judgment was, therefore, given for the defendant, with costs.

DISPOSAL OF GOODS FROM WRECK.

In *Roberts* v. *Weeks*, recently heard at Bristol County Court, the claim was for the return of certain goods (or £38, their value) and £20 damages; and the counter-claim was for £15 (the cost of removing certain of the goods) and £50 as damages for negligently allowing the goods to remain on board a wreck. The plaintiff's case was that (1) his tug, the "Black Hawk," was wrecked in a fog, off Portishead, on the 3rd January, and was sold (for £40) to the defendant for breaking up—not for salvage or re-floating; (2) the sale did not include the steering gear, davits, salvage fittings, a forge and tools, but the defendant refused permission to remove these, and wrongfully removed them to his haulier's yard; (3) there was no condition that the plaintiff should remove the goods forthwith, and the defendant's only right (if an unreasonable time elapsed) would be to drop the goods over the side, to be fetched at low water by the plaintiff. The defendant's case was that (*a*) his alleged right to throw the articles overboard was never mentioned; (*b*) the plaintiff could always have had the articles, on payment of the cost of removal; (*c*) if the tug had been cleared of the articles in question, she could have been floated and beached, and the breaking up would have been more profitable to the defendant. His Honour Judge Parsons, K.C., gave judgment for the plaintiff for £25 (or the return of goods of that value) and £10 as damages for their detention, and judgment was also given in his favour on the counter-claim.

SOLICITORS' RIGHTS AND LIABILITIES.

In a recent case at Thetford County Court (*Fowell, Woolsey and Thorold* v. *Porter*) the claim was for £3 19s. as money lent, in the following circumstances: (1) in 1933 one Stevens had consulted the plaintiffs about his liability to his wife under a maintenance order; (2) the defendant was housekeeper to Stevens, and she agreed to borrow the necessary amount—in order to satisfy the debt on his behalf; (3) she accordingly signed a receipt, acknowledging the above loan from the plaintiffs. The defendant's case was that (*a*) the amount had not been borrowed by her, but by Stevens—and she had signed the document (at his request) without knowing it was a receipt; (*b*) corroborative evidence was afforded by the plaintiffs' bill of costs to Stevens, e.g., the item "Letter arranging to lend you £3 19s., this amount being guaranteed by Mrs. Porter." The plaintiffs contended, however, that the amount was lent to the defendant, as Stevens had no assets, but His Honour Judge Herbert Smith held that (1) according to the bill of costs, the defendant was guaranteeing the debt, and her receipt was not an accurate record of the transaction; (2) as there was no document in writing, the defendant was not liable on her guarantee, nor for money lent. Judgment was therefore given for the defendant, with costs.

BOROUGH OF WOLVERHAMPTON.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North-street, Wolverhampton, on Friday, 6th July, at 10 o'clock in the forenoon.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31 Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Proposed Lessee—Whether Liability for Lease not completed.

Q. 2990. A, the owner of shop property, verbally agrees to lease at a rack rent his shop premises to B, a limited liability company registered under the Companies Act, through one of the directors, who verbally agrees to B taking the lease, and all the terms to be incorporated in the lease are discussed by both parties at an interview with A's solicitor, when it is pointed out to B's director that the company as lessees have to pay the lessor's solicitors' costs of the lease, and the amount of the fees and stamp duties are agreed. The director of B, being anxious for the lease to be drawn up and completed as quickly as possible, presses A's solicitor to put other matters aside and proceed with the work. A's solicitor the following morning draws the lease, and it is in course of being fair copied in draft to be sent to B for approval, so that B could get his own solicitor to approve it, when B's director telephones A's solicitor that B cannot agree to the term of years arranged, but must have a less term, which request is agreed to, and the fair copy draft lease is sent to B altered accordingly. B then returns the draft and refuses to go on. (1) Has A's solicitor a good claim against B for his costs under Sched. II for the work done by him as lessor's solicitor? (2) If so, should he deliver his bill to B one month before he takes action? If there are any authorities on the points raised kindly refer to them in the answer and quote cases (if any).

A. In *Baker* v. *Merryweather* (1849), 2 C. and K. 737, it was held that a proposed lessee refusing to accept lease was liable to lessor for the costs; but in that case the proposed lessee took possession. The decision must therefore be understood of an enforceable contract. The question whether the solicitor can recover direct from the proposed lessee depends on privity of contract: *Re Ipston Park Colliery Co.: Brough's Claim* (1870), 18 W.R. 285, not reported elsewhere. Slight evidence of retainer is sufficient: *Smith* v. *Clegg* (1858), 27 L.J. Ex. 300. The opinion is given that in this case, as nothing was said about another solicitor, there is just sufficient evidence to justify a claim against the company, if the director was acting within the scope of his authority; and if the sole defence was that he was not so acting, he might be liable to damages for breach of warranty of authority. A bill would have to be delivered to the Company and a month expire

Landlord and Tenant—Rent Acts.

Q. 2991. A protected tenant sub-lets a portion of his house to another person. The tenant pays in all (rent and rates) approximately 10s. per week. He charges the sub-tenant 10s. per week for the use of two-thirds of the house and use of garden, thus, in a way, living rent free himself. The sub-tenant only became such at August, 1933, but the tenant had previously let rooms for a year or two, and same had been empty for a month when the sub-tenant entered last August. The tenant therefore contends that such rooms are de-controlled by reason of the fact that he had had vacant possession between 1922 and 1933, thus taking the rooms out of the Act before the 1933 Act came into force. He has not registered the rooms, but proposes to do so by applying for the usual certificate of delay through the county court registrar. The rateable value of the whole house is under £13—a class "C" house. The sub-tenant states that his legal rent for the sub-tenancy is not more than 5s. per week, and that he is entitled to an apportionment under the Acts, and even suggests that he cannot be given notice and turned out. He refuses to pay more than 5s. per week and will not go out. If the tenant sues for possession and recovery of the rent, the sub-tenant will, presumably, ask for apportionment, but it is submitted he is not entitled to any legal protection whatever under the Acts. Unfortunately, the landlord (superior) takes the view that his tenant should not charge such a high rent, thus further complicating the issue. Advice is please desired as to whether the tenant is entitled to possession and the arrears of rent at 10s. per week, or if the sub-tenant is entitled (*a*) to remain; and/or (*b*) to apportionment of the rent by the county court judge.

A. The rooms sub-let by the protected tenant do not appear to be de-controlled (see Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (1), proviso; *Catto* v. *Curry* [1926] 1 K.B. 460; *Doulin* v. *Parcell* (1927), 136 L.T. 633; *Domendietti* v. *Ryan* (1929), 141 L.T. 239; *Harris* v. *Stacey*, 73 Sol. J. 568; *Charonie* v. *Esterman* [1931] 2 K.B. 541; *Lefevre* v. *Hirst* (1931), 100 L.J., K.B. 733). It, therefore, follows that the rent of the rooms sub-let is subject to restriction, and that the tenant can claim the protection of the Acts, with apportionment of the rent (if necessary).

Will—Enforcing Production—Solicitor's Lien on for Costs.

Q. 2992. We are acting for executors and wish to obtain probate of the will and codicil of deceased. On producing an authority to a firm of solicitors who had prepared a codicil to the will of the deceased a few days before his death, the solicitors inform us that they will not hand over the codicil until their costs in connection therewith are paid. We see in The Law Society's handbook of "Law, Practice and Usage in the Solicitors Profession, 1923," p. 20, that: "A solicitor has no lien on the will of his client," but we cannot find anything in the cases quoted or referred to which assists us in the matter. Can the codicil be obtained without paying or giving any security for the costs, and generally, what is our position in the matter?

A. Production of the codicil may be enforced by order of court obtainable by motion or petition or otherwise summarily, or by way of subpœna. A solicitor cannot refuse production on the ground of a lien for costs. (See Court of Probate Act, 1857, s. 26; Court of Probate Act, 1858, s. 23; *ex parte* Law, 2 A. & E. 45.)

Land Drainage Act, 1930—Owner's Rate—Whether Chargeable on Occupier.

Q. 2993. In 1926 A let to B a farm under the usual form of tenancy for an agricultural holding under which B agreed "to pay all rates, taxes and assessments whatsoever which now are or hereafter may be imposed on the premises or any part thereof." Under the provisions of the Land Drainage Act, 1930, the local drainage board made an owner's rate of £6 and an occupier's rate of £3. B as occupier has paid the two rates and has deducted the owner's share, £6, when paying his rent, apparently relying on s. 26 (4) (*c*) of the Act. Is B entitled to deduct the owner's rate from the rent? The question really is whether a tenant can contract out of the Act and become liable for the rate in question, or whether such rate is similar to Sched. A tax, and a landlord is bound

to allow the deduction notwithstanding a contract to the contrary.

A. We do not think the real question is the one suggested. It appears to have been conceded ever since the case of *Bennett* v. *Womack* (1828), 7 B. and C. 627, that the tenant may take upon himself sewers rates, now called drainage rates. If, however, drainage rates are now assessed in respect of land in respect of which no similar rate was ever assessed, it is not so clear that new rates are covered: *Brewster* v. *Kitchin* (1868), 1 Ld. Raymond 317. It is considered, however, that the word "whatsoever" would cover a new class. The difficult point is that the drainage rates are not "imposed on the land," but only in respect of the land, and the opinion is given that if there are no other words bearing on the point the owner is not entitled to saddle the lessee with the owner's share of rate: *Hurst* v. *Hurst* (1850), 4 Ex. 571; 19 L.J. 410.

Trustees of Marriage Settlement—One Incapable.

Q. 2994. A and B are the surviving trustees of a marriage settlement, and in September, 1933, X, the surviving spouse, died, and all estate duty has now been paid. Subsequently to X's death A has through illness become incapable of doing any business whatsoever, and has given a power of attorney to a friend of his to look after his affairs. It is realised that it is not possible for A as a trustee to delegate his powers to his attorney. The only outstanding point is the realisation and dividing up between the beneficiaries of the trust funds. Is it possible for any special power of attorney to be given or should B either apply to the court for a new trustee to be appointed or, alternatively, can he appoint a new trustee without any such application?

A. It is not directly stated whether the settlement comprises land upon trust for sale, but from the reference to the trust funds it is assumed there is not any land. As no trusts appear in the books of any company or bank as to registered or inscribed stocks, shares or securities, if the existing power of attorney is sufficient to cover the realisation of investments held in joint names, there is no reason why it should not be acted on by the various companies or banks. If not, and A is mentally able to execute another power of attorney, this would be the cheapest way of proceeding, and he can consent to B distributing the funds. The new power would not of course refer to the trust, but merely to securities, etc., then jointly held, or better still, to the specific ones and all others, if any, then jointly held. The appointment of a new trustee would of itself be of no advantage if A was not in a condition to execute transfers, or to give a power of attorney to do so. If his condition is such that he is actually mentally or physically incapable B can (if there is no other person living who was nominated to appoint new trustees) appoint a new trustee in his place, and he and the new trustee could then apply to the court under s. 51 of T.A., 1925.

Finance Act, 1931, s. 28—Denoting Stamp on Counterpart Lease.

Q. 2995. We act for a considerable number of landowners in the granting of building leases for terms of 999 and 1,000 years, respectively. It has been our custom by arrangement with the lessees' solicitors where separately represented to lodge the necessary particulars for the produced stamp at the stamp office when stamping the lease and counterpart, and we have always had both the lease and the counterpart marked with the produced stamp. We see that in the March number of The Law Society's *Gazette* a question has been put to the Council as to whether it is necessary to have the counterpart lease marked with the produced stamp, and they have expressed the opinion that it is unnecessary to stamp the counterpart with the denoting stamp prescribed by s. 28 of the Finance Act, 1931. In our opinion it may not be absolutely necessary to have the counterpart so stamped, but it seems to us that it is very desirable, as the stamping of the counterpart more or less is evidence that the lease itself has been so stamped. As you are aware, the section provides that unless the lease is stamped with the produced stamp the document is not duly stamped. We have before us a case in point, where in the purchase by a client of certain ground rents reserved by building leases all the counterparts except one have been stamped. We have been wondering what is our position in case we had to sue or distrain or re-enter in case of non-payment of the ground rent. Our counterpart, unstamped as it is, with the produced stamp, would be no evidence to show that the lease had been stamped with that stamp. We propose to ask in our requisitions that some evidence shall be produced by the solicitors of the vendors of the ground rent in question that the lease had been stamped in accordance with the above-mentioned section, or that they shall have the counterpart stamped with the necessary stamp.

A. Our view accords with that expressed by the Council of The Law Society. Section 31 requires the lessee to produce the instrument by means of which the lease is granted, and s. 72 of the Stamp Act, 1891, except counterparts of leases not executed by the lessor from the necessity of having a denoting stamp. It is obvious the counterpart does not grant the term, and the covenants by the lessee contained therein are distinct from the grant of the term. Moreover, if the counterpart is produced as evidence of the right of the lessor of forfeiture of the term under the proviso for re-entry it is for the lessee to set up his own title under the lease. The action by the lessor for forfeiture is merely an admission by him that a lease was granted, and it is considered that s. 72 of the Stamp Act makes the counterpart admissible in evidence under s. 14 of that Act, notwithstanding sub-s. (4) of s. 28 of F.A., 1931, as the latter sub-section refers merely to the instrument required to be produced to the Commissioners under that section, which is the instrument by which the lease is granted.

Motor Car Insurance—Insurance Companies and Third Party Procedure.

Q. 2996. In the case of *Gowar* v. *Hales* [1924], 2 K.B. 282, the rule that it is improper in a running down action for the plaintiff's counsel to inform the jury that the defendant is insured was discussed and approved, and in that case too, Scrutton, L.J., decided that third party procedure was not applicable in such cases for the purpose of bringing in the insurance company, and pointed out that such a course would be totally inconsistent with the above-mentioned rule and the principle on which it is based. In view of the provision of the Road Traffic Act, 1930, s. 35 (1), which compels every owner of a motor car to insure against third party risk, can the defendant in a running-down action join in his insurance company as a third party if such company repudiate their *primâ facie* liability on the ground that the defendant has been guilty of contributory negligence. If not, what is the proper procedure for the defendant to pursue to enforce his claim against the insurance company?

A. The statutory provision for compulsory insurance (against third party risks) has not brought insurance companies within the scope of the third party procedure. The rule approved in the case quoted has, therefore, not been affected, and a defendant in a running-down action still cannot join in his insurance company as a third party. It is exceptional for an insurance company to repudiate liability on the ground that the defendant has been guilty of contributory negligence, as the latter phrase is only appropriate to describe the conduct of plaintiffs. The negligence of the defendant is the very thing he insured himself against, and also the risk which the insurance company have undertaken. The proper procedure (to enforce the claim against the insurance company) is to sue them on the policy—unless (as is probably the case) there is a proviso that disputes shall be referred to arbitration. In the latter event the requisite notice should be served with regard to the appointment of an arbitrator.

To-day and Yesterday.

LEGAL CALENDAR.

25 JUNE.—"He must have been working at manual labour . . . when he was at least a hundred and twelve years old. That is eminently improbable. He must have remained unmarried until the year 1738, when he was at least seventy-five years of age, and then he is said to have eloped with a young woman . . . After his marriage . . . he must have had four children, the last of whom was born in the year 1759, when the father must have been at least ninety-five years old. Now it is not one improbability only, but this is positively a congeries of improbabilities." Thus did Lord Bramwell in the *Lovat Peerage Case*, decided on the 25th June, 1885, sum up the contentions of the petitioner with regard to the ancestor through whom he claimed.

26 JUNE.—On the 26th June, 1800, James Hadfield was tried in the King's Bench for shooting at George III at Drury Lane Theatre. He had served in the 15th Light Dragoons, had been an orderly to the Duke of York, and in 1794 had been severely wounded in the head during an engagement near Roubaix. He had no disloyalty to the Crown, but when arrested said he was tired of living and thought that an attempt on the King's life was the best way of getting himself killed. After the defence had called evidence as to his military service and wounds, the Crown did not press the charge and he was acquitted on the ground of insanity.

27 JUNE.—On the 27th June, 1505, the Lincoln's Inn books record how several members "were put out of commons for watching with swords and clubs in the middle of the night and having a strife and affray with the Society of Gray's Inn, in scandal of this Society. Brennyng, Norres and Studvyle went away, and would not come before the Governors and the Society to be examined, so they are each fined 3s. 4d. The others submitted themselves and were each fined 20d."

28 JUNE.—A unique servant was plaintiff in a case heard in the Court of Common Pleas on the 28th June, 1845. Hardly had she entered the defendant's service, to nurse a lunatic aunt of his wife, when he borrowed all her savings, amounting to £130, giving her in acknowledgment a promissory note. For seventeen years she stayed, receiving no wages, and when she left the defendant offered her two sovereigns. Now she brought her action and was met with a plea that the debt was barred by the Statute of Limitations and that no wages were due because she had been treated as a friend. It is good to read that she recovered judgment.

29 JUNE.—On the 29th June, 1842, Sir William Alexander died, being then over eighty. After fifteen unspectacular years as a Master in Chancery, he was suddenly called forth into prominence and appointed, somewhat to his own astonishment, Chief Baron of the Exchequer. He discharged his duties very efficiently, resigning in 1831, to leave a vacancy for Lord Lyndhurst, an ex-Chancellor genuinely seeking employment. Providence gave him solace and interest in his retirement by decreeing that about that time iron ore should be discovered beneath his estate at Airdrie. This meant a considerable increase of fortune.

30 JUNE.—On the 30th June, 1800, Richard Bethell, who was to become Lord Chancellor Westbury, was born at Bradford-on-Avon.

1 JULY.—William Plunkett, the son of a Presbyterian minister, was born at Enniskillen on the 1st July, 1764. His mother, left unprovided for on her husband's death, managed to procure his education, and he went to the Bar, where he soon became one of the leading advocates in the Irish Courts. In 1827 he was Master of the Rolls in England for a few days, resigning owing to the unpopularity of an Irish appointment. Immediately afterwards he became Chief Justice of the Irish Common Pleas, and in 1830 Lord Chancellor of Ireland.

THE WEEK'S PERSONALITY.

Young Richard Bethell was precocious as a child and as a youth. At fourteen, "while still," as he used to say, "wearing a jacket and a frill," he matriculated at Wadham College, gaining a scholarship a few months later. He graduated when he had just completed his eighteenth year, taking a first in classics and a second in mathematics. He used to boast that from the age of seventeen he was entirely self-supporting, and only thus did he complete his education, for his father could no longer afford to maintain him at Oxford. His early successes implanted in him an over-mastering intellectual arrogance, an entirely sincere belief in his mental superiority to everybody else, and an ambitious determination to obtain the acknowledgment of his abilities. Those who stood in his way found him ruthless and not over scrupulous. In particular, he possessed the formidable weapon of a mercilessly sarcastic tongue which spared no one and which causes him to be remembered rather as the author of a number of audacious sayings than as the great judge he undoubtedly was. For a man of his character the administrative scandal, which compelled him to resign from the office of Lord Chancellor, was a veritable tragedy.

A FILM AND A JUDGE.

The fact that the British Board of Film Censors has refused to pass the scenario of a film based on the life of Lord Jeffreys, L.C., on the ground that it shows British justice in an unfavourable light, appears to indicate that the producers had adopted wholesale the slanders of Macaulay. They seem to have forgotten that another Whig, one who lived in the time of Jeffreys, Sir Joseph Jekyll, M.R., spoke of him as "an able and upright man, wherever he sat, and a great Chancellor." Even Roger North, who was no admirer of his, admitted that in civil cases, "when he was in temper and matters indifferent came before him, he became the seat of justice better than any other I ever saw in his place." It is as a criminal judge that Jeffreys has been most violently abused, and yet his ideas as to the defence of prisoners seem to have been much in advance of his time, judging by his dictum that it was "a hard case that a man should have a counsel to defend him for a twopenny trespass and his witnesses examined upon oath, but if he steal, commit murder or felony, nay, high treason, where life, estate, honour and all are concerned, he shall neither have counsel nor his witnesses examined upon oath."

DIED IN ACTION.

The recent death of His Honour Judge Moore, following a collapse at Greenwich County Court, after an all-day sitting, adds one more to the list of the men of law who have fallen at their posts in the front line. One of the most dramatic incidents of the kind was the end of Mr. Justice Bray. He collapsed in court, and his clerk rushing into the judge's corridor, met Mr. Justice McCardie to whom he cried: "He is dying on the Bench." Together they hurried into court and found Bray half reclining on his desk on which lay his notebook with the last scrawl of his pencil across the open page. They supported him to his private room, but he never recovered sufficiently to resume his work and some time later he died. Even more striking and sudden was the end of Mr. Justice Talfourd who, with the word "sympathy" on his lips, collapsed and died while charging the Grand Jury at Stafford. He had been calling for a closer understanding between rich and poor ending the estrangement of the classes of English society.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Delay in Local Land Charges Registries.

Sir,—Referring to Messrs. Wilkinson's letter published in your issue of the 9th instant, we beg to state that, on the 7th instant, we wrote the London County Council with a Land Charges Search Requisition and, in our letter therewith, said "When sending us the Certificate, will you kindly state whether your Council have any outstanding charges or notices against the property."

We received the Land Charges Search Certificate on the 14th instant, but have *only this morning* heard in reply to the inquiry. The interval between our letter and receipt of the reply has been eleven days (including, however, two Saturdays and two Sundays) and we have been waiting practically all that time to exchange contract. It is too long to be kept waiting in this respect.

We find that there is always more delay as to our inquiries of the London County Council than as to those of other county councils. The borough councils are fairly expeditious in these matters.

Chancery-lane, W.C.2. HOWE & RAKE.
18th June.

New Local Land Charges Rules.

Sir,—On the 7th May the Local Land Charges Rules, 1934, came into force, and the Form of Requisition for a Search in the Register of Local Land Charges (Form L.L.C.1) has been slightly amended. As I have reason to believe that the significance and usefulness of one of the alterations has not yet been generally appreciated, may I venture to draw attention to it through your columns?

Hitherto a certain amount of difficulty has arisen by reason of the fact that a solicitor has not known, when submitting a requisition, exactly what date would appear on his certificate. The new form of requisition, however, has space at its head for insertion of the date upon which it is desired that the Registrar should make the search. This enables solicitors not only to get their certificates dated exactly as they wish (usually up to and including the day before completion), but also—and this is the point which I think is sometimes missed—to send the requisition in safety several days before completion, with the date of the day before completion inserted in the allotted space, thus giving the Registrar plenty of time to deal with it or, where the requisition has been sent to the wrong Registrar, to send it on to its proper destination.

London, S.W. J. AUSTIN.
25th June.

The County Courts (Amendment) Act.

Sir,—With reference to your recent article upon the new County Court Rules, we venture to suggest that in any county court judgment the power to order instalments, even if the amount of the judgment debt exceeds £20 (exclusive of costs), may be exercised by the Judge or registrar.

Brighton. JOHN C. BOSLEY & LEGG.
14th June.

[It was stated in the article in question, there was not *prior to the County Courts (Amendment) Act*, 1934, any power to order payment by instalments, except by consent of the plaintiff, where the judgment exceeded £20, exclusive of costs (see s. 105, County Courts Act, 1888). It is this power to order instalments by consent which our correspondent no doubt has in mind.—ED., *Sol. J.*]

Reviews.

The Law of Easements: Founded on Select Cases. With Notes. By DOUGLAS AIKENHEAD STROUD, LL.D. (Lond.), Assistant Solicitor to the Post Office. 1934. Royal 8vo. pp. xxii and (with Index) 263. London: Sweet & Maxwell, Ltd. 17s. 6d. net.

This is a collection of leading cases on the Law of Easements giving a complete review of the subject, preceded by a tabular view of the modes of creation or "acquisition" of easements forming a serviceable book of reference to numerous points of detail likely to be encountered in practice. Dr. Stroud, in making choice of his cases, has given preference as far as possible to such cases as are not already fully quoted in "Gale" and "Goddard." Included in the volume is an analysis of the Prescription Act, 1832, with the various decisions thereon grouped under the passages to which they relate; the Statute itself being included in an Appendix. A number of modern cases of importance are reviewed, and there is little in regard to which the inquirer for information on easements of any and every sort ought not to be able to find information and guidance. A very exhaustive table of cases and a well-constructed index add greatly to the value of this work which practitioners of both branches of the legal profession should find a very useful addition to their libraries.

Stone's Justices' Manual. Sixty-sixth Edition. 1934. Edited by F. B. DINGLE, Solicitor, Clerk to the Justices for the City of Sheffield. Demy 8vo. pp. ccxciii and (with Index) 2351. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. 37s. 6d. net; Thin edition 42s. 6d. net.

Twenty-three new statutes have been incorporated in this valuable work; the most important are the Children's Act, the Summary Jurisdiction (Appeals) Act, the Service of Process (Justices) Act, the Rent Act, the Firearms Act, the Road and Rail Traffic Act, and the Local Government Act, all of 1933. That portion of the work relating to gaming and betting houses has been redrawn. Altogether 176 new cases have been incorporated in this edition; they include decisions on summer time and on the rating of sporting rights.

The Landlord and Tenant Act, 1927.—*Basis of Compensation.—De Profundis: E Tenebris Lux: Excelsior.* By L. G. H. HORTON-SMITH, Barrister-at-Law. 1934. Price 6d., or post free 7d.

This pamphlet, which has been reprinted from *The Estates Gazette* of 5th and 12th May, 1934, should help to produce uniformity of method in dealing with compensation for statutory goodwill under the Act of 1927. We understand from the author that it has been especially written in consequence of the authoritative decision of Scrutton and Maugham, L.JJ., sitting as a Divisional Court, in the recent *Whiteman Smith Motor Co. Case*. Copies may be obtained from the Hon. Treasurer of the Referees (Landlord and Tenant Act, 1927) Association, at 4A, Frederick's-place, Old Jewry, E.C.2.

Constitutional Law of England. By EDWARD WAVELL RIDGES, of Lincoln's Inn, Barrister-at-Law. Fifth Edition. 1934. By A. BERRIEDALE KEITH, D.C.L., D.Litt., of the Inner Temple, Barrister-at-Law. Demy 8vo. pp. xlviii, and (with Index) 672. London: Stevens & Sons, Ltd. 25s. net.

To the editing of this new edition of a very useful work Professor Berriedale Keith has brought a wealth of learning and has added so much of value as to transform it into a veritable encyclopedia of constitutional law, but which, unlike the normal encyclopedia, can be read through from title page to colophon with interest as well as instruction. At one time, and that not so very long ago, any work purporting to deal with constitutional law was comparatively

limited in scope, embracing merely such matters as the sovereignty of Parliament, the rule of law, and the conventions of the Constitution. These must still bulk largely in any treatment of the subject, but the borders of constitutional law have been widely extended by the ever-increasing efforts of the State to promote social and economic ends by legislation and administrative orders, and all these have to be taken into account by writers on the constitution and its laws. This has been done in this edition and learnedly commented on. Besides this, recent developments, for example, in Ireland, the passing of the Statute of Westminster on which the editor can speak with authority, the Indian Empire and the powers of the Governor-General and the Indian Legislature, and their relation to the Secretary of State in Council are clearly explained. A personal view expressed here and there adds a certain piquancy to the work, as, for example, where comment is made on the affair of Amritsar, described as "an outrage which was inadequately punished and gravely and permanently undermined the moral basis of British rule in India," or, again, where, dealing with the docking of judicial salaries and the discussion to which that event gave rise, it is said in a footnote that "it was absurd to suggest that judges could be affected injuriously by sharing a common sacrifice." Scottish readers, who felt themselves aggrieved by the former inadequate, and oftentimes inaccurate treatment of matters of special interest to them, particularly as to the legal position of the Church of Scotland, will find that most, if not all, of their grounds of complaint have been removed. Is the editor right, however, in his statement that the Lord Advocate is the head of the Scots Bar? We have always understood that the Dean of Faculty occupies this proud position, although it is true that the Lord Advocate takes precedence in court. We have noted one or two other slips, none of them of any moment it is true. Thus, we find retained among those disqualified for sitting in the House of Commons, "revising barristers in England for their districts." These functionaries were abolished several years ago and, to their great indignation, without a penny of compensation. Further, in speaking of the Queen Consort, it is stated that she is "represented in the courts by her own Attorney- and Solicitor-General." For something like a century there have been no such representatives of a Queen Consort. The statement in a footnote on p. 263 that the Court of Criminal Appeal is not bound to follow the rulings of the Privy Council may well be accurate, but the two cases referred to scarcely warrant this proposition, seeing that the case in the Privy Council was later in date than that in the Court of Criminal Appeal. Lastly, on p. 234, we received something akin to a shock when we read that "in 1830 it was statutorily provided that error from the King's Bench, Common Pleas, and Exchequer should *lay* to the Court of Exchequer Chamber, and thence to the House of Lords." These, however, are trifling slips in an excellent work full to overflowing with information and shrewd comment, and which we can cordially commend to all students of the subject. Tables of cases and statutes have been provided for the first time, and add materially to the value of the work for reference purposes.

The Stock Exchange Official Year Book, 1934. Compiled and edited by the Secretary of the Share and Loan Department of The Stock Exchange. Crown 4to. pp. cxcvi and 3204. London: Thomas Skinner & Co. 60s. net.

Under this title are combined for the first time the two valuable reference books known as "The Stock Exchange Year Book," first published in 1875, and "The Stock Exchange Official Intelligence," first published in 1882. As these works contain a great deal of duplicated matter, the publishers are to be congratulated on the agreement which rendered their amalgamation possible, and also on the satisfactory manner in which it has been carried out. The volume under review appears to combine the best points of each, and it will be found indispensable to those who are called on to advise on financial matters.

Books Received.

Amalgamations, Reconstructions, Holding Companies. No. 1 of "Taxation" Library Series. 1934. Demy 8vo. pp. 66. London: Gee & Co. (Publishers) Ltd. 3s. 6d. net.

The Structure of Business Management. By ROBERT ASHWORTH, R.D., F.C.A., F.S.A.A. 1934. Demy 8vo. pp. (with Index) 48. London: Gee & Co. (Publishers) Ltd. 3s. net.

Partnership Accounts. By R. C. DE ZOUCHE, F.C.A., and B. J. DAVIS, F.C.A. Second Edition. 1934. Demy 8vo. pp. (with Index) 180. London: Gee & Co. (Publishers) Ltd. 7s. 6d. net.

Executorship Law and Accounts, including the Scots Law and Practice. Vol. II of "Taxation" Library Series. 1934. Demy 8vo. pp. 139. London: Gee & Co. (Publishers) Ltd. 4s. net.

Liquidator's Time Table in a Winding-up by the Court. Compiled by R. B. T. CASTLE, A.C.A., and F. SEWELL BRAY, A.S.A.A. 1934. London: Gee & Co. (Publishers) Ltd. 2s. 6d. net.

Civil Procedure in a Nutshell. By MARSTON GARSIA, B.A., of Merton College, Oxford, the Middle Temple and the South-Eastern Circuit, Barrister-at-law. Third Edition. 1934. Demy 8vo. pp. v and (with Index) 92. London: Sweet and Maxwell, Ltd. 4s. net.

Public Rights in the Seashore. By H. GALLIENNE LEMMON, M.A., LL.M., Cantab., a Solicitor of the Supreme Court and a Notary Public. 1934. Royal 8vo. pp. xvii and (with Index) 329. London: Sir Isaac Pitman & Sons, Limited. 30s. net.

Advisory Committee on the Welfare of the Blind. Report of the Sub-Committee on Marketing and other matters affecting the employment and vocational training of Blind Persons. London: H.M.S.O. 1s. 3d. net.

Indian Partnership Act. By The Rt. Hon. Sir FREDERICK POLLOCK, Bart., K.C., D.C.L., of Lincoln's Inn, and The Rt. Hon. Sir DINSHAH TARDUNJI MULLA, Kt., C.I.E., M.A., LL.D., late Judge of the High Court of Bombay. 1934. Demy 8vo. pp. (with Index) 276. India: The Eastern Law House (Calcutta). London: Sweet & Maxwell, Ltd. Rs. 7 (net).

The English Police. Its Origin and Development from the earliest times to the present day. By C. H. GLOVER. 1934. Crown 8vo. pp. 143 (with Bibliography and Index). London: The Police Chronicle. 5s. net.

Questions and Answers on Jurisprudence. By L. BARTLETT, LL.B. 1934. Demy 8vo. pp. iv and 112. London: Sweet and Maxwell, Limited. 4s. net.

Advisory Committee on the Welfare of the Blind. Report of Sub-Committee on Marketing, etc. 1934. London: H.M. Stationery Office. 1s. 3d. net.

Tulane Law Review. Vol. VIII, No. 4. June, 1934. New Orleans: Tulane University of Louisiana. Subscription: $4.00 a year. Single copies, $1.00.

Willis's Workmen's Compensation. Twenty-ninth Edition. 1934. By W. ADDINGTON WILLIS, C.B.E., LL.B., of the Inner Temple and the North Eastern Circuit, Barrister-at-law, Deputy Crown Umpire of Unemployment Insurance. Crown 8vo. pp. cxxxiii and (with Index) 992. London: Butterworth & Co. (Publishers) Limited; Shaw & Sons, Limited. 17s. 6d. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

Notes of Cases.

House of Lords.

Selsdon *v.* Selsdon.

Lord Tomlin, Lord Warrington, Lord Thankerton, Lord Russell and Lord Macmillan. 18th June, 1934.

DIVORCE—*Jus Relictæ*—LIFE RENT INTEREST OF HUSBAND—LIABILITY TO ACCOUNT.

This was an appeal by Lord Selsdon against interlocutor of the First Division of the Court of Session, Scotland, and the real question in the case was whether Lord Seldon's life rent interest under his father's settlement ought to be taken into account in determining the amount of the *jus relictæ*. The action came before the Lord Ordinary who held, following *Scott* v. *Scott*, 30 S.C. 903, that Lady Selsdon was entitled to *jus relictæ* out of the life rent. The case was sent for hearing before seven judges on account of the importance of the issue. The First Division decreed that Lady Selsdon was entitled to payments in the name of *jus relictæ* from Lord Selsdon of one-third of the net sums accruing and to be paid by the trustees of the settlement in respect of the life interest of Lord Selsdon in the share of his father's trust estate. Lord Selsdon now appealed.

Lord TOMLIN, in giving judgment, said the point was of importance and considerable difficulty. It was not in dispute that on a dissolution of marriage at the instance of an innocent wife the wife was entitled to a share of the husband's movable estate on the basis of the fiction that as between husband and wife the husband was to be treated as civilly dead at the date of the decree of dissolution. The problem which arose in the present case appeared to have arisen for the first time in 1930 in the case of *Scott* v. *Scott* (*supra*). It was of the essential quality of the *jus* that it was a succession, or in the nature of a succession, and, therefore, consisted in a sharing only in those things in which there could be a succession. On that view of the matter a life rent of the husband could never be brought into account for the purpose of determining the amount of *jus relictæ*, whether the husband be naturally or only fictionally dead. Whatever were the nature attributed to the *jus*, the result was that, in ascertaining the quantum of the right, actual facts must be regarded, and a life rent of the husband such as that in the present case should be brought into account. He had found nothing in any of the cases inconsistent with that conclusion. In the result, therefore, he thought that the appeal failed, with costs.

Lords WARRINGTON, THANKERTON, RUSSELL and MACMILLAN also gave judgment dismissing the appeal.

COUNSEL: *T. M. Cooper*, K.C., *Charles Mackintosh* and *A. M. Wallace*; *T. Graham Robertson*, K.C., *J. G. McIntyre* and *Cyril Miller*.

SOLICITORS: *John Kennedy & Co.* for *W. and J. Cook*, W.S. Edinburgh; *Middleton, Lewis & Clark*, for *Dundas and Wilson*, C.S. Edinburgh.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Judicial Committee of the Privy Council.

MacKenzie *v.* Royal Bank of Canada.

Lord Blanesburgh, Lord Warrington of Clyffe, Lord Atkin, Lord Macmillan, and Lord Alness. 11th June, 1934.

BANKER—HYPOTHECATION OF SHARES—SECURITY FOR ADVANCE—CLAIM TO RECOVER SHARES—ALLEGED UNDUE INFLUENCE AND MISREPRESENTATION.

This was an appeal by Mrs. Jean MacKenzie from a judgment of the Appellate Division of the Supreme Court of Ontario, reversing a judgment of the trial judge in her favour.

The appellant's husband, John Angus MacKenzie, in 1913 formed a company, MacKenzie, Ltd., to carry on the business of manufacturing lumbermen's and railway contractors' supplies. In 1907 Mrs. MacKenzie's father had died, leaving her 187 shares in Ottawa Dairy Co., Ltd., worth at the material times about $10,000. Mrs. MacKenzie, in 1913, had hypothecated the shares at the respondent bank, the Royal Bank of Canada, to secure an advance for the benefit of MacKenzie, Ltd. The company prospered and in 1918 her shares were released to her. Later, however, the fortunes of the company changed, and on the 31st December, 1920, Mrs. MacKenzie, at the request of her husband and after interviews with the bank manager, signed the bank form of general hypothecation making her 187 Ottawa Dairy Co. shares "general and continuing collateral security for payment of the present and future indebtedness and liability of MacKenzie, Ltd." In May, 1921, an order of bankruptcy was made against the company. The effect of the Bankruptcy Act on the transactions as carried out was that the company's debt to the bank was not simply released by operation of law, but was discharged and paid by the acceptance by the bank of the company's property in exchange for the debt. Thereafter there was no indebtedness or liability of the company to which the hypothecation by Mrs. MacKenzie on the 31st December, 1920, could attach. In due course arrangements for reconstruction were completed and carried out, and a new company, MacKenzie Manufacturing Co., Ltd., was formed, and in the result the bank were in much the same position in relation to the new company as they had been before the bankruptcy of the old. But the bank and Mr. MacKenzie required Mrs. MacKenzie to enter into a guarantee of the indebtedness of the new company and a new hypothecation, and on the 21st November, 1921, at the bank's office, she signed the ordinary form of bank guarantee with a limit of $200,000 and an hypothecation form securing the indebtedness of the new company. Before doing so she was assured by her husband and the bank manager that her shares were still bound to the bank, that they were gone anyway, and that she had a chance of getting them back if she signed. Later she brought the present action to recover the shares and attacked the transaction on the ground of undue influence of her husband and of misrepresentation.

Lord ATKIN, giving the judgment of the Board, said that in their view the evidence fell far short of proof of undue influence by the husband. Their Lordships, however, had come to the conclusion that the contract could not be allowed to stand for another reason. A contract of guarantee, like any other contract, was liable to be avoided if induced by material misrepresentation of an existing fact, even if made innocently. At the time the new company was formed the evidence conclusively established a misrepresentation by the bank that the plaintiff's shares were still bound to the bank. It did not seem to admit of doubt that such a representation made as to the plaintiff's private rights and depending on transactions in bankruptcy, of the full nature of which she had not been informed, was a representation of fact. It followed that the plaintiff was at all times, on ascertaining the true position, entitled to avoid the contract and recover her securities. Appeal allowed.

COUNSEL: *Hector Hughes*, K.C., *A. E. Cluffe* and *Horace Douglas*, for the appellant; *D. N. Pritt*, K.C., and *J. Douglas Watt*, for the respondents.

SOLICITORS: *Lawrence Jones & Co.*; *Blake & Redden*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Court of Appeal.

Timmins *v.* Brodsworth Main Colliery Co. Ltd.

Lord Hanworth, M.R., Slesser and Romer, L.JJ. 30th May and 8th June, 1934.

MASTER AND SERVANT—WORKMEN'S COMPENSATION—INDUSTRIAL DISEASE—CERTIFICATE—RETURN TO WORK—EFFECT OF FRESH CERTIFICATE—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 43.

Appeal from the Doncaster County Court.

In April, 1928, the workman, who had been employed by the company, obtained a certificate that he was suffering from miner's nystagmus disabling him from earning full wages. As no date for the beginning of the disablement was stated, it was treated under s. 43 (2) of the Workmen's Compensation Act, 1925, as beginning at the date of the certificate. The workman was paid 30s. a week compensation till, in September, 1929, he went back to his old work. His eyes got worse and in January, 1930, he again ceased work, being paid full compensation till October, 1930, when he was given work on the surface. He resumed his old work in January, 1932, continuing at it till November, 1932, when he was disabled for six weeks by a septic throat. He was again suffering from his eyes, and in January, 1933, he obtained a second certificate that he was suffering from miner's nystagmus, the date of disablement being again left blank. On claiming compensation under this certificate, he was paid by his employers 24s. 7d. a week, a sum calculated with reference to the wages he was receiving before the date of the second certificate. He claimed, however, that he was suffering from a recrudescence of the original attack of the disease and that he was entitled to 30s. a week under the original certificate. The county court judge held that he was so entitled.

Lord HANWORTH, M.R., allowing the appeal, said that as s. 43 of the Act gave compensation for disablement through certain industrial diseases due to the workman's employment at any time within twelve months previous to the date of disablement, that date was of importance. By s. 43 (ii) (*e*) the employer to whom notice of disablement was to be given was the employer who last employed the workman during the said twelve months in the employment to which the disease was due. The court could not reopen the question on evidence generally apart from the certificate (*Meredith* v. *Ebbw Vale Steel Co.* 18 B.W.C.C. 251). His lordship referred to *Wilsons and Clyde Coal Co.* v. *Flynn* [1930] A.C. 516; *Needham* v. *Ace Mill Ltd.*, 21 B.W.C.C. 189; *Young* v. *Keeble Ltd.*, 21 B.W.C.C. 294; and *McDougall* v. *Somerlee Iron Co. Ltd.*, 20 B.W.C.C. 419. In the present case, the certificate struck out any other date leaving its own as the date of disablement, and whereas in *Connor* v. *Cadzow Coal Co. Ltd.*, 27 B.W.C.C. 396, the referee was dealing with the measure of recovery of the workman. This was a case of a man who had returned to full work and subsequently asked for a fresh certificate. The workman could not elect to rely on the certificate that suited him best.

SLESSER, L.J., dissented and ROMER, L.J., agreed.

COUNSEL: *E. Dale; Neal.*

SOLICITORS: *Johnson, Weatherall & Hardy*, agents for *Parker Rhodes, Cockburn & Co.*, of Rotherham; *Corbin, Greener & Co.*, agents for *Raley & Sons*, of Barnsley.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Ropner Shipping Co. *v.* Morgan and Another. Same *v.* Miller.

Lord Hanworth, M.R., Slesser and Romer, L.JJ.
14th May and 5th June, 1934.

MASTER AND SERVANT — WORKMEN'S COMPENSATION — DEPENDENTS—WIFE—DEATH AFTER PAYMENT INTO COURT —CLAIM OF HER NEXT OF KIN—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 2 (3).

Appeal from the Barry County Court.

A fireman on board a steamship was drowned when it foundered in November, 1933. At that date his dependents were his wife, his father and his mother. The company recognised its liability to pay them compensation, and the amount not having been determined "by committee, by arbitration or by agreement," paid £300 into court on the 2nd January, 1934, under r. 61 of the Workmen's Compensation Rules. The wife died on the 10th January. On the 27th January, the registrar reported to the county court judge that the sum was inadequate. At the subsequent inquiry before the judge, the deceased wife's father claimed the sum which would have been payable to her had she lived. It was held that the sum having been paid in with an admission of liability, the company could not contend that it was more than necessary and that the wife's next of kin was entitled to the portion which could be appropriated to her.

Lord HANWORTH, M.R., allowing the appeal, said that the registrar's decision showed that no agreement or award had been made, and the matter was then still open for the judge's determination. Therefore, s. 2 (3) of the Act applied, and the compensation must be calculated as if the wife had died before the workman. It had been argued that under r. 61 the employers were estopped from saying that their liability was less than £300, but the notice to be sent by the registrar to the persons interested when making his inquiries precluded finality. The employers were entitled to say that had they known of the wife's death the payment would have been smaller. Under r. 1 the code of rules applied when, though there was no dispute as to liability, the sum payable had not been ascertained. Therefore, under r. 7 the employers could ask for payment, because their position had not been determined till the matter came before the judge.

SLESSER and ROMER, L.JJ. agreed.

COUNSEL: *Carey Evans; Trevor Morgan.*

SOLICITORS: *Botterell & Roche*, agents for *Donald Maclean and Hann*, of Cardiff; *Elfyn David & Hamblen*, of Cardiff.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

L. *v.* L. Sir Boyd Merriman, P. 14th May, 1934.

DIVORCE—PERMANENT MAINTENANCE—CONDUCT OF THE PETITIONER—PATERNITY OF CHILD NOT DISPUTED IN MAIN PETITION—RESPONDENT ESTOPPED—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 190—MATRIMONIAL CAUSES RULES, 1924, r. 21, 22A, Appendix No. VI.

Summons adjourned into court.

This was an application on behalf of the respondent to a maintenance petition for leave to tender *aliunde* evidence of non-access, with the object, *inter alia*, of relieving himself of the liability of supporting "the child of the marriage." The parties were married in 1920. On 17th July, 1930, the wife presented a petition for judicial separation on the ground of desertion, which stated that there was issue of the marriage, one child, a daughter born in November, 1927, and contained a prayer for custody. By his answer, dated 13th December, 1930, the respondent denied desertion and prayed that the petition should be dismissed. On 6th February, 1931, the petitioner presented a supplemental petition alleging adultery and praying for a decree of dissolution in the exercise of the discretion of the court, and for custody. The respondent did not file an answer. The petitioner admitted adultery on a single occasion on 1st July, 1931. A decree *nisi* was pronounced on the supplemental petition and the order contained the following: "On the application of counsel for the petitioner it is ordered that the child issue of the marriage between the petitioner and the respondent do remain in the custody of the petitioner until further order of the court." On 5th March, 1931, an order for alimony *pendente lite* had been made at the rate of £800 per annum free of tax. On 5th October, 1931, the petitioner presented a petition for permanent maintenance for herself and the child, and alleged that by the decree *nisi* she had been given the custody of the child, then three years of age. The decree *nisi* was made absolute on 15th January, 1932, and on the 19th January an interim order of maintenance was made at the rate of £800 per annum free of tax. By his answer, dated 2nd March, 1932, the respondent admitted the facts of the order for custody, but

raised the issue of the petitioner's own conduct. By a further answer dated 9th May, 1933, the respondent raised the issue of non-access at the time when the child was conceived, which led to the present application.

Sir BOYD MERRIMAN, P., in the course of delivering a considered judgment, said that the respondent now wished to dispute the paternity of the child with the object of persuading the court to make a smaller award of maintenance on the ground that the conduct of the wife was a matter to be taken into account under s. 190 of the Judicature Act, 1925, and of contending that no maintenance should be allowed in respect of the child. Counsel for the petitioner had admitted that the wife's conduct was material, but submitted that, as between the spouses, the paternity and legitimacy of the child was *res judicata*, and that the respondent was absolutely precluded from putting before the court any evidence directed to show that he was not the father of the child. For the respondent it was urged that a maintenance petition was a wholly separate proceeding from the petition for dissolution, raising separate issues and leading to a separate judgment, and that the order for the custody of the child did not operate as an estoppel, as there was no need for the husband to object to the wife being given the custody of a child of whom he knew that he was not the father. (His lordship here referred to *Restall* v. *Restall* [1930] P. 189; 73 SOL. J. 385; and on, *res judicata*, to *Ord* v. *Ord* [1923] 2 K.B. 432.) In the present case the respondent deliberately abstained from putting in issue the paternity of the child in his answer to the wife's original petition, and made no answer to the supplemental petition. Matrimonial Causes Rules 21 and 22A, coupled with the form of answer given in Appendix No. VI to the Rules, had the effect of precluding a party, who had had an opportunity of proving a fact in support of his claim or defence and had not chosen to rely on it, from afterwards putting that fact before any tribunal. There was no doubt that the practice of the Divorce Court was to treat as being admitted any material fact alleged in the petition which was not expressly stated in the answer to be denied or not to be admitted. The present case was essentially one of the class of cases in which, as between the parties, a fact "directly in issue in the case has actually been decided by the court and appears from the judgment itself to be the ground on which it was based": "Stephen's Digest of Evidence." Although the petition for maintenance was a proceeding, separate and distinct from the petition for divorce, it was nevertheless dependent on the pronouncement of a decree of divorce. In other words, the petition for maintenance could only be brought as incidental to the matrimonial suit between the same parties. The fact that the child was issue of the marriage between the parties was a fact directly in issue in the divorce suit, had actually been decided and appeared from the judgment itself to be the ground on which it was based, as must necessarily be the case if the court was to have jurisdiction to make the order. In those circumstances, whatever the truth might be about the paternity of the child, the respondent, on the petition for maintenance, was precluded from averring that he was not the father. He, his lordship, was fortified in that conclusion by the decision of Lord Merrivale in *Green* v. *Green* [1929] P. 101; 73 SOL. J. 111, and of Mr. Justice Hill in *Woodland* v. *Woodland* [1928] P. 169; 72 SOL. J. 303. In the result the respondent would not be allowed to file evidence directed to disproving his paternity of the child, and the summons would be dismissed with costs.

COUNSEL: *Bayford*, K.C., and *A. Richard Ellis*, for the respondent; *Alford Mortimer*, for the petitioner; *F. J. H. Bryant*, for the child.

SOLICITORS: *Tyrrell Lewis & Co.; G. H. Drury.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Mr. William d'Angibau, solicitor, of Woodside, Branksome Park, Bournemouth, left £25,326, with net personalty £13,056.

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Obituary.

Mr. J. AMPHLETT.

Mr. James Amphlett, solicitor, head of the firm of Messrs. Amphlett & Co., of Colwyn Bay, died on Sunday, 17th June, at the age of sixty-seven. Mr. Amphlett, who was admitted a solicitor in 1892, had been Clerk to the Magistrates, Colwyn Bay Division, for the past twenty-seven years. He had also been Clerk to the Colwyn Bay Council for twenty-eight years.

Major C. H. BULL.

Major Charles Herbert Bull, solicitor, Clerk of the Peace for the Borough of Oswestry, died on Tuesday, 5th June, at the age of seventy-nine. Admitted a solicitor in 1878, he joined the firm of Messrs. Bull & Sons, and on the death of his father he assumed a number of responsible offices. Among them were those of Clerk to the Oswestry County Justices, Clerk of the Peace for the borough, Clerk to the Oswestry R.D.C., and the Chirk R.D.C., Clerk to the Assessment Committee of the Oswestry Incorporation, and Assistant Clerk to the Incorporation, and Assistant Clerk to the Commissioner of Taxes for the Oswestry Division.

Mr. C. R. TAYLOR.

Mr. Charles Richard Taylor, M.A., LL.D. (Camb), solicitor, of New Broad-street, E.C., and Brentwood, Essex, died at Bournemouth on Saturday, 23rd June. Mr. Taylor was admitted a solicitor in 1875.

Mr. E. J. WATSON.

Mr. Edward James Watson, solicitor, a partner in the firm of Messrs. E. J. Watson, Cox and Counsell, of Bristol, died at Bristol on Friday, 22nd June. Mr. Watson was admitted a solicitor in 1896.

Mr. A. H. WILSON.

Mr. Alexander Hayman Wilson, solicitor, of Victoria-street, S.W., died at his home at South Kensington on Saturday, 23rd June, at the age of sixty-nine. Mr. Wilson, who was admitted a solicitor in 1885, succeeded his uncle Mr. Thomas Luxmoore Wilson, as head of the firm of Messrs. T. L. Wilson & Co., and for many years had been among the most prominent of the solicitors specialising in Indian appeals to the Privy Council. He was also Honorary Solicitor to the Royal Asiatic Society and the Free Church of England.

The list of results of the Incorporated Accountants' Final, Intermediate and Preliminary Examinations held in May last shows that altogether 996 candidates sat and of these 467 were successful. Sixteen candidates were awarded Honours.

Parliamentary News.

Progress of Bills.

House of Lords.

Administration of Justice (Appeals) Bill.
Read Third Time. [21st June.
Adoption of Children (Workmen's Compensation) Bill.
Read Second Time. [26th June.
Assessor of Public Undertakings (Scotland) Bill.
Royal Assent. [22nd June.
Birmingham United Hospital Bill.
Royal Assent. [22nd June.
Clydebank and District Water Order Confirmation Bill.
Royal Assent. [22nd June.
Corby (Northants) and District Water Bill.
Royal Assent. [22nd June.
Cotton Manufacturing Industry (Temporary Provisions) Bill.
Read Third Time. [21st June.
Debts Clearing Offices and Import Restrictions Bill.
Read First Time. [27th June.
Dundee Corporation Order Confirmation Bill.
Read Second Time. [26th June.
Edinburgh Corporation Order Confirmation Bill.
Royal Assent. [22nd June.
Finance Bill.
Read First Time. [26th June.
Gas Undertakings Bill.
Commons Amendments agreed to. [26th June.
Irvine and District Water Board Order Confirmation Bill.
Royal Assent. [22nd June.
Licensing (Permitted Hours) Bill.
Royal Assent. [22nd June.
London County Council (General Powers) Bill.
Read Third Time. [21st June.
London County Council (Money) Bill.
Read First Time. [26th June.
London Midland and Scottish Railway Bill.
Read Third Time. [21st June.
London Passenger Transport Board Bill.
Read First Time. [21st June.
London Passenger Transport Board (Interim Financial Arrangements) Bill.
Read First Time. [26th June.
Maidstone Waterworks Bill.
Read Third Time. [27th June.
Marriages Provisional Orders Bill.
Read Second Time. [26th June.
Mexborough and Swinton Traction (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [27th June.
Newcastle-upon-Tyne Corporation Bill.
Read Third Time. [27th June.
Nottingham Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [27th June.
Palestine Loan Bill.
Reported without Amendment. [27th June.
Pier and Harbour Provisional Orders (Clacton-on-Sea and Saint Mawes) Bill.
Read First Time. [26th June.
Post Office (Sites) Bill.
Royal Assent. [22nd June.
Protection of Animals (Cruelty to Dogs) (Scotland) Bill.
Royal Assent. [22nd June.
Ramsgate Corporation Bill.
Read Third Time. [21st June.
Renfrewshire County Council (Eastwood and Mearns) Water Order Confirmation Bill.
Read Second Time. [26th June.
Road Traffic (Compensation for Accidents) Bill.
Read Third Time. [26th June.
St. Helen's Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [27th June.
Sea Fisheries Regulation Bill.
Reported without Amendment. [21st June.
South West Suburban Water Bill.
Royal Assent. [22nd June.
Southend-on-Sea Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [27th June.
Southern Railway Bill.
Royal Assent. [22nd June.
Statutory Salaries (Restoration) Bill.
Royal Assent. [22nd June.
Stockport Corporation Bill.
Reported with Amendments. [26th June.

Stockport Extension Bill.
Reported with Amendments. [21st June.
Trustee Savings Banks (Special Investments) Bill.
Reported without Amendment. [26th June.
Walthamstow Corporation Bill.
Read Third Time. [27th June.
Wandsworth Borough Council Bill.
Royal Assent. [22nd June.
Watchet Urban District Council Bill.
Royal Assent. [22nd June.
West Gloucestershire Water Bill.
Royal Assent. [22nd June.
Whaling Industry (Regulations) Bill.
Read Second Time. [21st June.
Workmen's Compensation (Coal Mines) Bill.
Royal Assent. [22nd June.

House of Commons.

Administration of Justice (Appeals) Bill.
Read First Time. [25th June.
Architects (Registration) Bill.
Read Second Time. [26th June.
Betting and Lotteries Bill.
Read Second Time. [27th June.
British Sugar (Subsidy) Bill.
Reported without Amendment. [25th June
Cotton Manufacturing Industry (Temporary Provisions) Bill.
Lords Amendments agreed to. [26th June.
Darlington Corporation Bill.
Lords Amendments agreed to. [25th June.
Debts Clearing Offices and Import Restrictions Reprisals Bill.
Read Third Time. [26th June.
Durham County Water Board Bill.
Read Second Time. [25th June.
Finance Bill.
Read Third Time. [22nd June.
Glasgow Corporation Order Confirmation Bill.
Read First Time. [26th June.
London County Council (General Powers) Bill.
Lords Amendments agreed to. [27th June.
London County Council (Money) Bill.
Read Third Time. [25th June.
London Midland and Scottish Railway Bill.
Lords Amendments agreed to. [25th June.
London Passenger Transport Board (Interim Financial Arrangements) Bill.
Read Third Time. [26th June.
Lowestoft Corporation Bill.
Reported with Amendments. [21st June.
Merchandise Marks (Trade Descriptions) Bill.
Read First Time. [21st June.
Middlesex County Council Bill.
Read Second Time. [25th June.
Ministry of Health Provisional Order Confirmation (Burnham and District Water) Bill.
Read Second Time. [27th June.
Ministry of Health Provisional Order Confirmation (Herriard and District) Water Bill.
Read Second Time. [27th June.
Ministry of Health Provisional Order Confirmation (Morley) Bill.
Reported without Amendment. [27th June.
Ministry of Health Provisional Order Confirmation (Sheppey Water) Bill.
Read Second Time. [27th June.
Ministry of Health Provisional Order Confirmation (South Middlesex and Richmond Joint Hospital District) Bill.
Read First Time. [20th June.
Ministry of Health Provisional Order Confirmation (Wey Valley Water) Bill.
Read First Time. [20th June.
National Maritime Museum Bill.
Read First Time. [15th June.
Newcastle-upon-Tyne Corporation Bill.
Read First Time. [27th June.
Newport Corporation (General Powers) Bill.
Reported with Amendments. [22nd June.
Newport Extension Bill.
Reported with Amendments. [26th June.
Pier and Harbour Provisional Orders (Clacton-on-Sea and Saint Mawes) Bill.
Read Third Time. [25th June.
Ramsgate Corporation Bill.
Read First Time. [21st June.
Rotherham Corporation (Trolley Vehicles) Provisional Order Bill.
Reported with Amendments. [27th June.
Sheffield Gas Bill.
Read Second Time. [25th June.
Shops Bill.
Reported with Amendments. [26th June.
Taunton Corporation Bill.
Withdrawn. [26th June.
Tyne Improvement Bill.
Read Second Time. [25th June.
Unemployment Bill
Lords Amendments agreed to. [26th June.
Wantage Urban District Council Bill.
Read Second Time. [25th June.

Questions to Ministers.

ROAD TRAFFIC BILL.

Mr. JOEL asked the Minister of Transport the approximate date on which the Road Traffic Bill will come into force after it receives the Royal Assent, especially in view of the need for preliminary arrangements on the part of all the local authorities concerned.

Mr. STANLEY: As the Bill is still before the House, I am afraid I cannot answer my hon. Friend's question at this stage. He may wish, however, to put down another question when the Bill has received the Royal Assent. [27th June.

Rules and Orders.

THE HOUSING (RATE OF INTEREST) AMENDMENT ORDER, 1934, DATED JUNE 8, 1934, MADE BY THE MINISTER OF HEALTH, WITH THE APPROVAL OF THE TREASURY, UNDER SECTION 18 OF THE HOUSING ACT, 1930 (20 & 21 GEO. 5. c. 39), AMENDING THE HOUSING (RATE OF INTEREST) ORDER, 1930. 78,629.

The Minister of Health, in pursuance of the powers conferred on him by subsections (3) and (5) of section 18 of the Housing Act, 1930 (in this order referred to as "the Act"), and of all other powers enabling him in that behalf, with the approval of the Treasury, hereby orders as follows:—

1. This order may be cited as the Housing (Rate of Interest) Amendment Order, 1934.

2. The rate of interest on expenses incurred by a local authority under section 18 of the Act, and

(*a*) demanded after the date of this order, or

(*b*) declared after the date of this order, by order of the local authority made under subsection (5) of the said section,

to be payable by instalments,

shall be at the rate of four per cent. per annum instead of at the rate of five per cent. per annum as fixed by the Housing (Rate of Interest) Order, 1930.*

Given under the official seal of the Minister of Health this eighth day of June, nineteen hundred and thirty-four.

(L.S.) *J. C. Wrigley,*
Assistant Secretary,
Ministry of Health.

We approve this order.

Austin Hudson,
Walter J. Womersley,
Two of the Lords Commissioners of His Majesty's Treasury.

* S.R. & O. 1930 (No. 930) p. 620.

THE COUNTY COURT DISTRICTS (ROMFORD AND ILFORD) ORDER, 1934. DATED JUNE 15, 1934.

I, John Viscount Sankey, Lord High Chancellor of Great Britain, by virtue of section 4 of the County Courts Act, 1888,(*) as amended by section 9 of the County Courts Act, 1924,(†) and of all other powers enabling me in this behalf, do hereby order as follows:—

1. The County Court of Essex held at Romford and Ilford shall cease to be held at Romford and shall be held at Ilford by the name of the County Court of Essex held at Ilford.

2. This Order may be cited as the County Court Districts (Romford and Ilford) Order, 1934, and shall come into operation on the 1st day of September, 1934, and the County Courts (Districts) Order in Council, 1899, as amended,(‡) shall have effect as further amended by this Order.

Dated the 15th day of June, 1934.

Sankey, C.

(*) 51-2 V. c. 43. (†) 14-5 G. 5. c. 17.
(‡) S.R. & O. 1899, No. 178, printed as amended to 1903, S.R. & O. Rev. 1904, III, County Court, E., p. 1. For subsequent amendments, *see* "Index to S.R. & O. in Force, June 30, 1933" at pp. 190-3.

Societies.

General Council of the Bar.

The following resolution was passed at a recent meeting of the General Council of the Bar :—

"That the Council is of opinion that the proposed transfer of work from the Divisional Court to the Court of Appeal, following the limitation of the right to trial by jury, will throw a burden upon the Court of Appeal which, as it is at present constituted, is not able to bear and will render it essential for the speedy and efficient administration of justice that three new Lord Justices of Appeal should be appointed without diminishing the present strength of the King's Bench and Chancery Divisions of the High Court of Justice, and that there is no practical alternative which will achieve comparable economy and efficiency in the administration of Justice."

E. A. GODSON, Secretary.

Legal Notes and News.

Honours and Appointments.

Mr. JAMES G. HUTCHINSON, solicitor, Coroner for Bradford, has been elected President of the Coroners' Society of England and Wales for the ensuing year. Mr. Hutchinson was admitted a solicitor in 1892.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

GREGORY, ROWCLIFFE'S 150TH BIRTHDAY.

To celebrate the 150th anniversary of the foundation of the firm, the partners of Messrs. Gregory, Rowcliffe & Co., of 1, Bedford-row, London, gave a dinner at the Dorchester Hotel, Park Lane, on Wednesday, 27th June. Invitations were issued to the firms for whom they act as London agents.

The company numbered over 100, and included Sir Reginald Poole, President of The Law Society, Sir Edmund Cook, Secretary of The Law Society, and the firm's articled clerks, bar students and managing clerks.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.		EMERGENCY ROTA.	APPEAL COURT No. I.	GROUP I. MR. JUSTICE EVE. Witness. Part II.	MR. JUSTICE BENNETT. Non-Witness.
		Mr.	Mr.	Mr.	Mr.
July	2	Jones	More	More	Andrews
,,	3	Ritchie	Hicks Beach	*Ritchie	More
,,	4	Blaker	Andrews	Andrews	Ritchie
,,	5	More	Jones	*More	Andrews
,,	6	Hicks Beach	Ritchie	Ritchie	More
,,	7	Andrews	Blaker	Andrews	Ritchie

		GROUP I. MR. JUSTICE CROSSMAN. Witness. Part I.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Withess. Part II.
		Mr.	Mr.	Mr.	Mr.
July	2	*Ritchie	*Hicks Beach	Blaker	*Jones
,,	3	*Andrews	*Blaker	Jones	Hicks Beach
,,	4	*More	*Jones	Hicks Beach	*Blaker
,,	5	Ritchie	*Hicks Beach	Blaker	Jones
,,	6	*Andrews	Blaker	Jones	*Hicks Beach
,,	7	More	Jones	Hicks Beach	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 12th July, 1934.

	Div. Months.	Middle Price 27 June 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	112½xd	3 11 1	3 4 5
Consols 2½%	JAJO	79¼	3 2 11	—
War Loan 3½% 1952 or after	JD	103¼	3 7 10	3 5 2
Funding 4% Loan 1960-90	MN	114	3 10 2	3 3 11
Victory 4% Loan Av. life 29 years	MS	112½	3 11 1	3 6 6
Conversion 5% Loan 1944-64	MN	117¾	4 4 11	2 16 9
Conversion 4½% Loan 1940-44	JJ	109¾	4 2 0	2 14 4
Conversion 3½% Loan 1961 or after	AO	103½	3 7 8	3 6 1
Conversion 3% Loan 1948-53	MS	101½	2 19 1	2 17 3
Conversion 2½% Loan 1944-49	AO	96¼	2 11 11	2 16 3
Local Loans 3% Stock 1912 or after	JAJO	92¼	3 5 0	—
Bank Stock	AO	358½	3 6 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	83	3 6 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	90	3 6 8	—
India 4½% 1950-55	MN	111	4 1 1	3 11 9
India 3½% 1931 or after	JAJO	92	3 16 1	—
India 3% 1948 or after	JAJO	78¼	3 16 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	116	3 17 7	3 11 3
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	3 3 10
Tanganyika 4% Guaranteed 1951-71	FA	111	3 12 1	3 3 0
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	101	2 19 5	2 18 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	108	4 3 4	3 5 5
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	106	3 15 6	3 13 11
*Australia (C'mm'nw'th) 3¼% 1948-53	JD	100	3 15 0	3 15 0
Canada 4% 1953-58	MS	108	3 14 1	3 8 4
Natal 3% 1929-49	JJ	98	3 1 3	3 3 5
*New South Wales 3½% 1930-50	JJ	97½	3 11 10	3 14 2
New Zealand 3% 1945	AO	97	3 1 10	3 6 8
Nigeria 4% 1963	AO	108	3 14 1	3 11 1
Queensland 3½% 1950-70	JJ	98	3 11 5	3 12 0
South Africa 3½% 1953-73	JD	102	3 8 8	3 7 2
Victoria 3½% 1929-49	AO	99	3 10 8	3 11 10
W. Australia 3½% 1935-55	AO	99	3 10 8	3 11 4
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	90	3 6 8	—
Croydon 3% 1940-60	AO	97	3 1 10	3 3 4
Essex County 3½% 1952-72	JD	104	3 7 4	3 4 3
*Hull 3½% 1925-55	FA	101	3 9 4	—
Leeds 3% 1927 or after	JJ	90	3 6 8	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	102	3 8 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	77	3 4 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	90	3 6 8	—
Manchester 3% 1941 or after	FA	91	3 5 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	95	2 12 8	2 18 4
Metropolitan Water Board 3% "A" 1963-2003	AO	92	3 5 3	3 5 11
Do. do. 3% "B" 1934-2003	MS	93	3 4 6	3 5 1
Do. do. 3% "E" 1953-73	JJ	97xd	3 1 10	3 2 9
Middlesex County Council 4% 1952-72	MN	110	3 12 9	3 5 2
‡ Do. do. 4½% 1950-70	MN	115	3 18 3	3 5 7
Nottingham 3% Irredeemable	MN	90	3 6 8	—
Sheffield Corp. 3¼% 1968	JJ	103xd	3 8 0	3 7 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	105¼xd	3 15 10	—
Gt. Western Rly. 4½% Debenture	JJ	115¼xd	3 17 11	—
Gt. Western Rly. 5% Debenture	JJ	126¼xd	3 19 1	—
Gt. Western Rly. 5% Rent Charge	FA	125¼xd	3 19 8	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	123¼	4 1 0	—
Gt. Western Rly. 5% Preference	MA	112½	4 8 11	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 12 6
Southern Rly. 5% Guaranteed	MA	124½	4 0 4	—
Southern Rly. 5% Preference	MA	111	4 10 1	—

*Not available to Trustees over par. ‡Not available to Trustees over 115.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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